

Board of Education Regular Meeting

February 13, 2024 6:00 PM

MCS Administrative Offices

I. CALL TO ORDER Procedural Item	Chair Butch Campbell
A. Pledge of Allegiance Procedural Item The Pledge of Allegiance will be led by Chair Butch Campbell	
B. Moment of Silence Procedural Item	
II. APPROVAL OF AGENDA Action Item	Chair Butch Campbell
III. COMMUNICATIONS Information Item	Mrs. Lisa Trail
A. Spotlight on Education-January 4th Professional Development at MTSU Procedural Item	Ms. Sheri Arnette
B. Public Comment Procedural Item	Chair Butch Campbell
IV. CONSENT ITEMS Consent Agenda	Chair Butch Campbell
A. Approval of 1-9 Board Meeting Minutes and 1-27 Board Retreat Minutes Consent Item	
B. Approval of School Fees Consent Item	
C. Approval of Contracts Exceeding \$25,000, but less than \$50,000- Trane Consent Item	
D. Second Reading of Board Policies Consent Item	
i. Approval of Board Policy 2.703 Audits on Second Reading Consent Item	
ii. Approval of Board Policy 2.8001 Energy Management and Conservation on Second Reading Consent Item	
iii. Approval of Board Policy 2.801 Credit Cards and Credit Lines on Second Reading Consent Item	
iv. Approval of Board Policy 4.205 Magnet Schools on Second Reading Consent Item	
v. Approval of Board Policy 6.702 Fundraising Activities on Second Reading Consent Item	
V. ACTION ITEMS Action Item	Chair Butch Campbell
A. Approval of Open/Closed Zone Schools Action Item	Dr. Trey Duke

B. Approval of Toadvine Contract for Bleachers at Bradley Academy, Mitchell Neilson Elementary, Reeves Rogers Elementary, and Discovery School Action Item	Dr. Trey Duke
C. Approval of E-Rate Program Agreement of Intent Action Item	Dr. Trey Duke
D. Approval of the Sub-Recipient Agreement and One Time Funding Resolution Action Item	Dr. Trey Duke
E. Approval of FY24 Central Cafeteria Fund 143-USDA Additional Revenue Action Item	Dr. Trey Duke
F. Approval of FY24 Central Cafeteria Fund 143-Rebate Action Item	Dr. Trey Duke
G. Approval of FY24 General Purpose Fund 141-Robotics Grants Action Item	Dr. Trey Duke
H. Approval of FY24 21st Century Grant Budget Amendment Action Item	Dr. Trey Duke
I. Approval of Title IX McKinney Vento Budget Amendment Action Item	Dr. Trey Duke
J. Approval of Title III Multilingual Liaison Action Item	Dr. Trey Duke
K. Approval of Surety Bond for Finance Director Action Item	Dr. Trey Duke
VI. REPORTS AND INFORMATION Information Item	Chair Butch Campbell
A. Labor Market Report and Differentiated Pay Plan Action Item	Dr. Trey Duke
B. Update on Basketball Program Information Item	Mr. Don Bartch
C. Director's Update Information Item	Dr. Trey Duke
VII. OTHER BUSINESS Information Item	Chair Butch Campbell
VIII. ADJOURNMENT Action Item	Chair Butch Campbell

MINUTES

Board of Education Regular Meeting

January 9, 2024 6:00 PM

City Hall Council Chambers

<p>I. CALL TO ORDER Procedural Item Present: Mr. Wesley Ballard, Mr. Butch Campbell, Ms. Karen Dodd, Ms. Barbara Long, Ms. Amanda Moore, Mr. Jimmy Richardson III, Mr. David Settles (arrived at 6:27 p.m.).</p> <p>In attendance: Dr. Trey Duke, Lisa Trail, Don Barch, Andy Taylor, Sandy Scheele, Beth Prater, Daniel Owens, Sheri Arnette, Angela Fairchild, Ken Rocha, Jenny Ortiz, M'Lisa Miffleton, Ynetia Campbell, Caitlin Ballard, Maria Johnson, and Shea Payne</p> <p>Assistant City Attorney Lauren Bush and City Liaison Bill Shacklett</p>	Chair Butch Campbell
<p>A. Pledge of Allegiance Procedural Item</p>	
<p>B. Moment of Silence Procedural Item</p>	
<p>II. APPROVAL OF AGENDA Action Item Motion to approve the agenda. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. Wesley Ballard, passed. Yea: 6, Nay: 0, Absent: 1</p>	Chair Butch Campbell
<p>III. COMMUNICATIONS Information Item</p>	Mrs. Lisa Trail
<p>A. Introduction of Mr. Daniel Owens Information Item</p>	Dr. Trey Duke
<p>B. The Best of MCS-Mr. Geary Fults Procedural Item</p>	Dr. Trey Duke
<p>C. Spotlight on Education-Discovery School Beta Club Procedural Item</p>	Dr. Trey Duke
<p>D. Public Comment Procedural Item</p>	Chair Butch Campbell
<p>E. Audit Overview by Mr. Jimmy Jobe with Jobe Hastings Audit Firm Information Item Mr. Jimmy Jobe with Jobe Hastings presented his findings on the recent district audit. He said that he had no findings to report and this was a clean, unmodified opinion of the Jobe Hastings Audit Firm.</p> <p>Dr. Duke said that he wanted to thank Jobe Hastings and Molly, the auditor, who spent a lot of time in our office completing this audit. He said that she was great to work, and he was very pleased with the report.</p> <p>Chair Campbell also thanked Mr. Jobe for the report.</p>	Dr. Trey Duke
<p>IV. CONSENT ITEMS Consent Agenda Motion to approve consent agenda.. This motion, made by Ms. Amanda Moore and seconded by Ms. Barbara Long, passed. Yea: 6, Nay: 0, Absent: 1</p>	Chair Butch Campbell

Minutes
Page 1 of 5
January 9, 2024
Recorded by L. VanCleave

A. Approval of 12-12-23 Board Minutes Consent Item	
B. Minor Change to Board Policy Consent Item	
i. Board Memo-Consent Agenda Policy Changes Consent Item	
ii. Approval of Board Policy 2.100 Fiscal Management Goals Consent Item	
iii. Approval of Board Policy 2.200 Annual Operating Budget Consent Item	
iv. Approval of Board Policy 2.400 Revenues Consent Item	
v. Approval of Board Policy 2.402 Investment Earnings Consent Item	
vi. Approval of Board Policy 2.500 Deposit of Funds Consent Item	
vii. Approval of Board Policy 2.600 Bonded Employees Consent Item	
viii. Approval of Board Policy 2.700 Accounting System Consent Item	
ix. Approval of Board Policy 2.701 Financial Reports and Records Consent Item	
x. Approval of Board Policy 2.702 Inventories Consent Item	
xi. Approval of Board Policy 2.800 Expenditure of Funds Consent Item	
xii. Approval of Board Policy 2.808 Purchase Orders and Contracts Consent Item	
xiii. Approval of Board Policy 2.809 Vendor Relations Consent Item	
xiv. Approval of Board Policy 2.900 Student Activity Funds Management Consent Item	
C. Second Reading of Board Policies Consent Item	
i. Approval of Board Policy 2.802 Payroll Procedures on Second Reading Consent Item	
V. ACTION ITEMS Action Item	Chair Butch Campbell
A. Approval of Board Policy 2.703 Audits on First Reading Action Item Motion to approve Board Policy 2.703 Audits on First Reading. This motion, made by Ms. Karen Dodd and seconded by Mr. Wesley Ballard, passed. Yea: 6, Nay: 0, Absent: 1	Ms. Lauren Bush
B. Approval of Board Policy 2.8001 Energy Management and Conservation on First Reading Action Item Motion to approve Board Policy 2.8001 Energy Management and Conservation on First Reading. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0	Ms. Lauren Bush
C. Approval of Board Policy 2.801 Credit Cards and Credit Lines on First Reading	Ms. Lauren Bush

<p>Action Item Motion to approve Board Policy 2.801 Credit Cards and Credit Lines on First Reading. This motion, made by Ms. Amanda Moore and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	
<p>D. Approval of Board Policy 4.205 Magnet Schools on First Reading Action Item Motion to approve Board Policy 4.205 Magnet Schools on First Reading. This motion, made by Mr. Wesley Ballard and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0 Ms. Barbara Long asked if we have a sibling policy.</p> <p>Dr. Bullard explained that we have an Administrative Directive and it covers siblings of currently enrolled students. Siblings are prioritized within the academic band they score.</p>	Ms. Lauren Bush
<p>E. Approval of Board Policy 6.702 Fundraising Activities on First Reading Action Item Motion to approve Board Policy 6.702 Fundraising Activities on First Reading. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0</p>	Ms. Lauren Bush
<p>F. Approval of Budget Amendment-FY24 GPS TISA Growth Stipend Action Item Motion to approve Budget Amendment-FY24 GPS TISA Growth Stipend. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0</p>	Dr. Trey Duke
<p>G. Approval of Budget Amendment-FY24 GPS Transfer-Safety Project Action Item Motion to approve Budget Amendment-FY24 GPS Transfer-Safety Project. This motion, made by Mr. David Settles and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0</p>	Dr. Trey Duke
<p>H. Approval of Budget Amendment-ESP Fund Balance Action Item Motion to approve Budget Amendment-ESP Fund Balance. This motion, made by Mr. Jimmy Richardson III and seconded by Ms. Amanda Moore, passed. Yea: 7, Nay: 0</p>	Dr. Trey Duke
<p>I. Approval of Contract-MNE Playground Contract Action Item Motion to approve Contract-MNE Playground Contract. This motion, made by Ms. Karen Dodd and seconded by Ms. Barbara Long, passed. Yea: 7, Nay: 0 The Board questioned the timeline of the MNE playground.</p> <p>Mr. Bartch told the Board the process would begin four to six weeks after the contract is signed, and then it will take eighty-one days to complete. Currently looking at a completing date of mid-May or mid-June. Once the new playground is completed, they will tear down the old one and use parts across the district. He also explained that the new playground will be on the hill in the back of the school, which would be much safer.</p> <p>Chair Campbell said that he was also concerned with the primary playground and asked if anyone had looked into fencing around the back side of that playground. Dr. Duke said that had not been discussed, but he and Mr. Bartch will get with Mr. Willeford on that issue.</p>	Dr. Trey Duke
<p>J. Approval of Contract-GHA Technologies Action Item</p>	Dr. Trey Duke

Motion to approve Contract-GHA Technologies. This motion, made by Ms. Barbara Long and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0	
K. Approval of Contract-J & B Professional Services Agreement for Reeves Rogers Addition Action Item Motion to approve Contract-J & B Professional Services Agreement for Reeves Rogers Addition. This motion, made by Ms. Barbara Long and seconded by Ms. Amanda Moore, passed. Yea: 7, Nay: 0 Ms. Long asked when this addition will begin. Mr. Bartch said that he hopes to break ground in early August, but may possibly be able to begin a month earlier. He said that it will take one calendar year to build. There were some concerns about operating school during construction, but Mr. Bartch assured the Board that there was a plan in place. He said that he began meetings regarding this construction about a month ago. He explained that the buzz in system would be moved to the left of the cafeteria. He said that buses, car riders, and ESP would be in different locations, but he anticipated no problems in operating during the school year.	Dr. Trey Duke
L. Approval of Contract-Cooperative Agreement for School Specialty Action Item Motion to approve Contract-Cooperative Agreement for School Specialty. This motion, made by Mr. Wesley Ballard and seconded by Mr. Jimmy Richardson III, passed. Yea: 7, Nay: 0	Dr. Trey Duke
M. Approval of Stipends to Ensure Qualified Case Managers Action Item Motion to approve Stipends to Ensure Qualified Case Managers. This motion, made by Mr. David Settles and seconded by Ms. Amanda Moore, passed. Yea: 7, Nay: 0	Dr. Trey Duke
N. Approval of the ESA Resolution Action Item Motion to approve the ESA Resolution. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. David Settles, passed. Yea: 7, Nay: 0	Dr. Trey Duke
O. Approval of Revenue and Expenditure Report Information Item Motion to approve the Revenue and Expenditure Report. This motion, made by Ms. Amanda Moore and seconded by Ms. Karen Dodd, passed. Yea: 7, Nay: 0	Dr. Trey Duke
VI. REPORTS AND INFORMATION Information Item	Chair Butch Campbell
A. Enrollment (PTR) Report Information Item	Mr. Ken Rocha
B. School Nutrition Update Information Item Ms. Scheele told the Board that we are now allowed to offer no cost meals to all students across the district (breakfast and lunch). Ms. Long asked if this includes staff, but it does not.	Ms. Sandy Scheele
C. Director's Update Information Item Dr. Duke announced that Ms. Maria Johnson has been selected to be on the Tennessee Department of Education's Preparation working group. This group will provide feedback to the department to ensure that every teacher that enters the classroom is well prepared.	Dr. Trey Duke

<p>Dr. Duke said that the next meeting will be at central office on January 27 and will be an all-day board retreat.</p>	
<p>VII. OTHER BUSINESS Information Item Chair Campbell wanted to remind everyone that the Hall of Fame ceremony will held February 6 at John Pittard with several wonderful inductees. He invited everyone to attend.</p> <p>He stated that the 2023-24 inductees include Ms. Sandra Parks, Mabel Pittard, Ernest Victory, and Mr. Judy Beasley Whitehead.</p> <p>Dr. Duke thanked the committee.</p>	<p>Chair Butch Campbell</p>
<p>VIII. ADJOURNMENT Action Item Ms. Bush reminded all board members to file the SS8005 form with the state by January 31. She said that it can be completed electronically.</p> <p>The meeting adjourned at 7:06 p.m.</p>	<p>Chair Butch Campbell</p>

Director of Schools

MINUTES

Board of Education Retreat

January 27, 2024 8:00 AM

MCS Administrative Offices

<p>I. CALL TO ORDER Procedural Item Present: Mr. Wesley Ballard, Mr. Butch Campbell, Ms. Karen Dodd, Ms. Barbara Long, Ms. Amanda Moore, Mr. Jimmy Richardson III, Mr. David Settles. Staff: Dr. Trey Duke, Sheri Arnette, Angela Fairchild, Lisa Trail, Maria Johnson, Ken Rocha, Don Barch, Daniel Owens, Andy Taylor</p> <p>Assistant City Attorney Lauren Bush and City Liaison Bill Shacklett. Mr. Shacklett came to the meeting but had to leave to speak at the NAACP meeting in the place of the Mayor.</p>	Chair Butch Campbell
<p>II. APPROVAL OF AGENDA Action Item Motion to approve the agenda. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. Wesley Ballard, passed. Yea: 7, Nay: 0</p>	Chair Butch Campbell
<p>III. PUBLIC COMMENT Procedural Item</p>	Chair Butch Campbell
<p>IV. RECOGNITION OF TENNESSEE SCHOOL BOARD WEEK-JANUARY 21-27 Information Item Dr. Duke shared a gratitude video with the Board and Ms. Trail had gifts at their tables to recognize them during School Board Appreciation Week.</p>	Dr. Trey Duke
<p>V. REPORTS AND INFORMATION Information Item</p>	Chair Butch Campbell
<p>A. Strategic Five Year Plan Review/Update Information Item Dr. Duke discussed the process to review what in the Board's five-year strategic plan needed to be updated or adjusted. He reviewed the feedback process that was completed with the Teacher Advisory Group, Principals, Department Heads, and a Parent Input group. He outlined the adjustments that were being suggested in each of the four main categories. The Board will consider this for a formal vote in February.</p>	Dr. Trey Duke
<p>B. Transportation for 2024-2025 Information Item The MCS Transportation Department was highlighted to review how driver shortages have impacted the entire department and how services provided for children and their families are impacted. Although there have been very few transportation delays, they are eminent, and therefore, we need to adapt our services for delays and substitute drivers. Additionally, changes may increase our bus driver recruitment. One change is that we need to increase our Parent Responsibility Zone, at four schools from .75 to 1.0 mile. In future school years, more schools may be added. Families impacted by the Parent Responsibility Zone will have a first chance opportunity to sign up for ESP services in the summer. The other change presented was to move to a Hub style pick up and drop off system. MCS has added stops over the years to the point that one neighborhood on the west side of Murfreesboro has 27 stops. The "hub" plan condenses this neighborhood to seven stops with students walking no more than .3 miles to a stop. All schools and routes will be adjusted, and this will be communicated when students are assigned their bus stop in July.</p>	Mr. Don Barch
<p>C. Enrollment Update and Open School Zones for 2024-2025</p>	Mr. Ken Rocha

Minutes
Page 1 of 3
January 27, 2024
Recorded by L. VanCleave

<p>Information Item Dr. Duke reviewed current enrollment numbers for January 2024. This included outlining that our current enrollment is 9,408 students and 40% are considered economically disadvantaged. This increase is due to the fact that students eligible for Medicaid are included in the number. 15% of our student population are English Language Learners, and we have seen a 20% increase in our immigrant population since January of 2023 and a 12% increase since May of 2023.</p> <p>Ken Rocha shared with the Board that Murfreesboro City Schools will conduct the open enrollment period for zone waivers from February 29 - April 1, 2024. Parents or guardians of a student seeking to transfer their child to an open-zoned school for the 2024-25 school year must apply within this timeline. There are two types of requests that are completed on the same form: (1) new zone waiver and (2) students currently on a zone waiver requesting to remain at the school. Today, enrollment projections and open enrollment for the upcoming 2024-25 school year were shared.</p> <p>On February 23, 2024, the Board will consider approval of open-zoned schools and seats along with closed-zoned schools during the Board meeting.</p>	
<p>D. School Law for School Board Members Information Item Ms. Bush explained the different facets of school law and the responsibility of the Board for each one.</p>	Ms. Lauren Bush
<p>E. Reeves Rogers Update Information Item Dr. Duke shared with the Board the revised floor plan for the Reeves Rogers Addition as well as the architectural design for the outside of the building. Mr. Bartch updated the Board on the timeline and stated it was now slated to be finished earlier than originally reported. The planned completion date is July of 2025.</p>	Mr. Don Bartch
<p>F. Intergovernmental Agreements Information Item Dr. Duke outlined the impact the movement of county property tax pennies away from education has had on the school system for the last two years. He also updated the Board on a meeting that he and Mr. Owens had with the City Mayor and the County Mayor to discuss this. The Board also discussed ways to continue to build the partnership with Rutherford County Schools so that the city and county systems could work together to address the rapid growth in our community.</p>	Dr. Trey Duke
<p>G. Educator Labor Market Report Information Item Due to a lack of time, the Educator Labor Market Report will be discussed in detail at the upcoming Board budget meetings.</p>	Dr. Trey Duke
<p>VI. OTHER BUSINESS Information Item</p>	Chair Butch Campbell
<p>VII. ADJOURNMENT Action Item Motion to adjourn at 1:01 p.m.. This motion, made by Ms. Karen Dodd and seconded by Ms. Amanda Moore, passed. Yea: 7, Nay: 0 Meeting adjourned at 1:01 p.m.</p>	Chair Butch Campbell
<p>VIII. CLOSED SECURITY SESSION Action Item Meeting was called to order at 1:08 p.m.</p>	Dr. Trey Duke

<p>A. Approval of School Security Plans Action Item Motion to Approve the District Level and School Security Plans. This motion, made by Mr. Jimmy Richardson III and seconded by Mr. David Settles, passed. Yea: 7, Nay: 0 Andy Taylor presented the School Security Plans to the Board.</p> <p>Dr. Duke thanked Mr. Taylor for the work he has done with these security plans and the work that he has done since he has been in this position.</p> <p>Meeting adjourned at 1:45 p.m.</p>	<p>Mr. Andy Taylor</p>
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Director of Schools

Agenda Item Title: Approval of Student Field Trip Fees

Board Meeting Date: February 13, 2024

Department: Finance

Presented by: Trey Duke, Director of Schools

Board Agenda Category:

- Consent Agenda
 - Action Item
 - Reports and Information
-

Summary

Board Policy 6.709 states that prior to the start of each school year, the Board, upon the recommendation of the principals and Director of Schools, shall approve all known student fees for the upcoming school year. Additional fees may be approved during the year as needed.

The Director of Schools is recommending the Board approve the following field trip fees:

- \$125 per student for 6th grade students from John Pittard Elementary to travel to Land Between the Lakes on May 8-10, 2024, and
- \$63 per student for 4th grade students from Discovery School to travel to U.S. Space & Rocket Center in Huntsville, AL, on March 14th.
- \$37 per student for 6th grade students from Black Fox Elementary to travel to Camp Ridley in Columbia, TN, on May 20th.

Students at these schools took these same field trips in the 22-23 school year. John Pittard's fee remains the same (\$125), Discovery's fee is higher this year (from \$54 to \$63) and Black Fox's fee is higher this year (from \$30 to \$37).

Staff Recommendation

Recommending approval of student field trip fees of \$125 per 6th grade student at John Pittard Elementary to travel to Land Between the Lakes, \$63 per 4th grade student at Discovery School to travel to the U.S. Space & Rocket Center and \$37 per 6th grade student at Black Fox Elementary to travel to Camp Ridley.

Fiscal Impact

Field trips are paid for at the school level through student collection.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.

- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Agenda Item Title: Approval of Contracts Exceeding \$25,000, but less than \$50,000

Board Meeting Date: February 13, 2024

Department: Operations

Presented by: Lauren Bush

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between twenty-five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00) at the regularly scheduled Board meeting immediately following approval of the contract or agreement. An agreement with Trane for a Series R Compressor R'newal service for the chiller located at the Central Office was executed and is presented for review and approval.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

Cost of the contract is \$29,092.00 which is funded through the Operations budget

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



Trane U.S. Inc.
601 Grassmere Park Drive, Suite 10
Nashville, TN 37211
Phone: (615) 242-0311
Fax: (615) 726-3357
Service Contact: (615) 242-0311

January 08, 2024

Murfreesboro City Schools
2552 S Church St Ste 100
Murfreesboro, TN 37127-3712

Site Address:
Murfreesboro City Schools
2552 S Church St Ste 100
Murfreesboro, TN 37127

ATTENTION: Lacie Young

PROJECT NAME: Murfreesboro City Schools RTAA R'Newal

TRANE R'NEWAL® SERVICE PROGRAM

The Series R R'newal Service Program is an exclusive, comprehensive factory warranted solution designed to restore critical components of your Series R unit(s) to original operating condition, reliability, and life expectancy. The R'newal program is designed to decrease your chances of unscheduled downtime. This process replaces worn materials, restores compressor performance, and updates applicable components to current design. This service program is performed by Trane field personnel. Its intent is to address components whose wear over time presents a significant risk to unit reliability and operation. It is intended for owners with midlife equipment that want to get many more years out of their units

The Series R R'newal program is backed with a Trane warranty covering the compressor(s). This unique warranty reflects Trane's confidence in our compressors as well as our factory-authorized service technicians who work on them.

Per the attached proposal, it is our recommendation that your chiller be scheduled for a Series R Compressor R'newal service.

Thank you for giving us this opportunity. If you have any questions or concerns, please call me at (615) 242-0311.

Sincerely,

Michael Sharp
Account Manager
E-mail: michael.sharp@trane.com
Cell: (615) 351-2906
Trane

PROPOSAL

We are pleased to offer you this proposal for performance of the following Services for the Equipment listed:

Murfreesboro City Schools

The following "Covered Equipment" will be serviced at Murfreesboro City Schools:

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Air-Cooled Chiller Series R	1	Trane	RTAA125AYQ	U04A04112	

SCOPE OF SERVICES

SERIES R ROTARY SCREW CHILLER COMPRESSOR R'NEWAL® SERVICE

- Starter evaluation
- Circuit remove/transfer existing refrigerant (recovery equipment included)
- Renewed compressor is installed per OEM specification and start-up
- Oil and refrigerant lab analysis
- Depending on unit size and age, the following will be replaced:
 - High pressure cut-out switch
 - Drier cores
 - Oil filter element
 - Pressure relief valve
 - Master solenoid valve/coil
- Unit up-grades and modifications per unit schedule
- Re-install existing refrigerant that was removed or transferred
- All necessary labor and rigging
- Insulate compressor motor terminals
- Start-up and system checkout
- Shipping and Handling
- **Factory parts and labor warranty on compressor – see Warranty section (below) for details**

SERIES R RUNNING COMPRESSOR R'NEWAL WARRANTY

Series R R'newal includes a one-year standard parts warranty and 90 days labor on all components replaced as part of the offering.

In addition, the compressors on which R'newal has been completed will be covered by the Limited Factory Warranty for the term purchased:

- **2 Years Compressor Parts & Labor**

CLARIFICATIONS

- The existing HCFC-22 will be re-used. If additional refrigerant is necessary, it is **not included** and will be billable in addition to this proposal.
- Unless specified, upgrades to the motor starter and controls are not included in this proposal.
- Labor is at normal working hours only and excludes labor costs due to unusual equipment access.
- The Limited Factory Warranty is available at the URL listed below and is incorporated herein by this reference: [RNC-SVW001A-EN_07132021.pdf \(trane.com\)](https://www.trane.com/literature/SVW001A-EN_07132021.pdf)
- Proposal includes Boom Truck and assumes that it can be driven up to the unit.
- Proposal assumes chilled water loop can be isolated without draining the loop, including operational isolation valves.

PRICING AND ACCEPTANCE

TOTAL PRICE:\$29,092.00 USD

CLARIFICATIONS

- 1. Price does not include applicable sales taxes, which will be added and reflected in the invoice(s).
- 2. Any service not listed is not included.
- 3. Work will be performed during normal Trane business hours.

I appreciate the opportunity to earn your business and look forward to helping you with all of your service needs. Please contact me if you have any questions or concerns.

In addition to any other amounts then due hereunder, if this Agreement is terminated or cancelled prior to its scheduled expiration, Customer shall pay to Company the balance of any amounts billed to but unpaid by Customer. In the event a "Service Project" is also included as part of the Agreement funding option, Customer shall pay to Company the Cancellation Fee which shall be set forth in "Exhibit A" Cancellation Schedule attached hereto, which Cancellation Fee represents unbilled labor, non-labor expenses, and parts materials and components. Subject only to a prior written agreement signed by Trane, payment is due upon receipt of invoice in accordance with Section 7 of the attached Terms and Conditions – Quoted Service.

This proposal is valid 30 days from January 08, 2024.

This agreement is subject to Customer's acceptance of the attached Trane Terms and Conditions – Quoted Service.

CUSTOMER ACCEPTANCE	TRANE ACCEPTANCE
	Trane U.S. Inc.
_____	_____
Authorized Representative	Submitted By: Michael Sharp
_____	Proposed Date: January 8, 2024
Printed Name	Cell: (615) 351-2906
_____	Office: (615) 242-0311
Title	License Number: 23034
_____	_____
Purchase Order	Authorized Representative
_____	_____
Acceptance Date	Title

	Signature Date

TERMS AND CONDITIONS – QUOTED SERVICE

"Company" shall mean Trane U.S. Inc..

To obtain repair service within the scope of Services as defined, contact your local Trane District office identified on the first page of the Agreement by calling the telephone number stated on that page. That Trane District office is responsible for Company's performance of this Agreement. Only Trane authorized personnel may perform service under this Agreement. For Service covered under this Agreement, Company will be responsible for the cost of transporting a part requiring service.

1. Agreement. These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the services (the "Services") on equipment listed in the Proposal (the "Covered Equipment"). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

2. Connected Services. In addition to these terms and conditions, the Connected Services Terms of Service ("Connected Services Terms"), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

3. Acceptance. The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon the Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to provide Services in accordance with the Proposal. If Customer does not reject or object in writing to Company within 10 days, the Company's counteroffer will be deemed accepted. Customer's acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Services rendered by Company to the date of cancellation.

4. Cancellation by Customer Prior to Services; Refund. If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer's account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer's right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

5. Cancellation by Company. This Agreement may be cancelled by Company for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to performance of any Services hereunder and Company will refund to Customer, or credit Customer's account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

6. Services Fees and Taxes. Fees for the Services (the "Service Fee(s)") shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company's regular business hours and any after-hours services shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due.

7. Payment. Payment is due upon receipt of Company's invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due or otherwise enforcing these terms and conditions.

8. Customer Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead)

9. Performance. Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances as of the time Company performs the Services. Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company. Customer must reimburse Company for services, repairs, and/or replacements performed by Company at Customer's request beyond the scope of Services or otherwise excluded under this Agreement. The reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials. Prior to Company performing the additional services, repairs, and/or replacements, Customer may request a separate written quote stating the work to be performed and the price to be paid by Customer for the work.

10. Customer Obligations. Customer shall: (a) provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; and (b) unless otherwise agreed by Customer and Company, at Customer's expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.

11. Exclusions. Unless expressly included in the Proposal, the Services do not include, and Company shall not be responsible for or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement ("Pre-Existing Conditions") including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and
- (e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

12. Limited Warranty. Company warrants that: (a) the material manufactured by Company and provided to the Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement and (b) the labor/labour portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion (the "Limited Warranty"). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. Exclusions from this Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of Company equipment may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company ("Third-Party Product(s)") are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR**

SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN.

THE REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND. EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO

13. Indemnity. To the maximum extent permitted by law, Company and Customer shall indemnify and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

14. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), INCLUDING CONTAMINANTS LIABILITIES, OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINANTS OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.

15. CONTAMINANTS LIABILITY

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGED TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANTS LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANT LIABILITIES.**

16. Asbestos and Hazardous Materials. The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

17. Insurance. Company agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company or its insurer waive its right of subrogation

18. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days' notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

19. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Services are performed without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

20. Equal Employment Opportunity/Affirmative Action Clause. Company is a United States federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in

41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250; and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

21. U.S. Government Contracts.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement / Purchase Order are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. **The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. government contract, Customer agrees and hereby certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to contractor's Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of this offer or agreement, other than the Proposal or this Agreement.

22. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-10.48 (0821)
Supersedes 1-10.48 (0720)

SECURITY ADDENDUM

This Addendum shall be applicable to the sale, installation and use of Trane equipment and the sale and provision of Trane services. "Trane" shall mean Trane U.S. Inc. for sales and services in the United States, or Trane Canada ULC for sales and services in Canada.

1. **Definitions.** All terms used in this Addendum shall have the meaning specified in the Agreement unless otherwise defined herein. For the purposes of this Addendum, the following terms are defined as follows:

"Customer Data" means Customer account information as related to the Services only and does not include HVAC Machine Data or personal data. Trane does not require, nor shall Customer provide personal data to Trane under the Agreement. Such data is not required for Trane to provide its Equipment and/or Services to the Customer.

"Equipment" shall have the meaning set forth in the Agreement.

"HVAC Machine Data" means data generated and collected from the product or furnished service without manual entry. HVAC Machine Data is data relating to the physical measurements and operating conditions of a HVAC system, such as but not limited to, temperatures, humidity, pressure, HVAC equipment status. HVAC Machine Data does not include Personal Data and, for the purposes of this agreement, the names of users of Trane's controls products or hosted applications shall not be Personal Data, if any such user chooses to use his/her name(s) in the created accounts within the controls product (e.g., firstname.lastname@address.com). HVAC Machine Data may be used by Trane: (a) to provide better support services and/or products to users of its products and services; (b) to assess compliance with Trane terms and conditions; (c) for statistical or other analysis of the collective characteristics and behaviors of product and services users; (d) to backup user and other data or information and/or provide remote support and/or restoration; (e) to provide or undertake: engineering analysis; failure analysis; warranty analysis; energy analysis; predictive analysis; service analysis; product usage analysis; and/or other desirable analysis, including, but not limited to, histories or trends of any of the foregoing; and (f) to otherwise understand and respond to the needs of users of the product or furnished service. "Personal Data" means data and/or information that is owned or controlled by Customer, and that names or identifies, or is about a natural person, such as: (i) data that is explicitly defined as a regulated category of data under any data privacy laws applicable to Customer; (ii) non-public personal information ("NPI") or personal information ("PI"), such as national identification number, passport number, social security number, social insurance number, or driver's license number; (iii) health or medical information, such as insurance information, medical prognosis, diagnosis information, or genetic information; (iv) financial information, such as a policy number, credit card number, and/or bank account number; (v) personally identifying technical information (whether transmitted or stored in cookies, devices, or otherwise), such as IP address, MAC address, device identifier, International Mobile Equipment Identifier ("IMEI"), or advertising identifier; (vi) biometric information; and/or (vii) sensitive personal data, such as, race, religion, marital status, disability, gender, sexual orientation, geolocation, or mother's maiden name.

"Security Incident" shall refer to (i) a compromise of any network, system, application or data in which Customer Data has been accessed or acquired by an unauthorized third party; (ii) any situation where Trane reasonably suspects that such compromise may have occurred; or (iii) any actual or reasonably suspected unauthorized or illegal Processing, loss, use, disclosure or acquisition of or access to any Customer Data.

"Services" shall have the meaning set forth in the Agreement.

2. **HVAC Machine Data; Access to Customer Extranet and Third Party Systems.** If Customer grants Trane access to HVAC Machine Data via web portals or other non-public websites or extranet services on Customer's or a third party's website or system (each, an "Extranet"), Trane will comply with the following:
 - a. **Accounts.** Trane will ensure that Trane's personnel use only the Extranet account(s) designated by Customer and will require Trane personnel to keep their access credentials confidential.
 - b. **Systems.** Trane will access the Extranet only through computing or processing systems or applications running operating systems managed by Trane that include: (i) system network firewalls; (ii) centralized patch management; (iii) operating system appropriate anti-malware software; and (iv) for portable devices, full disk encryption.
 - c. **Restrictions.** Unless otherwise approved by Customer in writing, Trane will not download, mirror or permanently store any HVAC Machine Data from any Extranet on any medium, including any machines, devices or servers.
 - d. **Account Termination.** Trane will terminate the account of each of Trane's personnel in accordance with Trane's standard practices after any specific Trane personnel who has been authorized to access any Extranet (1) no longer needs access to HVAC Machine Data or (2) no longer qualifies as Trane personnel (e.g., the individual leaves Trane's employment).
 - e. **Third Party Systems.** Trane will provide Customer prior notice before it uses any third party system that stores or may otherwise have access to HVAC Machine Data, unless (1) the data is encrypted and (2) the third party system will not have access to the decryption key or unencrypted "plain text" versions of the HVAC Machine Data.

3. Customer Data; Confidentiality. Trane shall keep confidential, and shall not access or use any Customer Data and information that is marked confidential or by its nature is considered confidential ("Customer Confidential Information") other than for the purpose of providing the Equipment and Services, and will disclose Customer Confidential Information only: (i) to Trane's employees and agents who have a need to know to perform the Services, (ii) as expressly permitted or instructed by Customer, or (iii) to the minimum extent required to comply with applicable law, provided that Trane (1) provides Customer with prompt written notice prior to any such disclosure, and (2) reasonably cooperate with Customer to limit or prevent such disclosure.
4. Customer Data; Compliance with Laws. Trane agrees to comply with laws, regulations governmental requirements and industry standards and practices relating to Trane's processing of Customer Confidential Information (collectively, "Laws").
5. Customer Data; Information Security Management. Trane agrees to establish and maintain an information security and privacy program, consistent with applicable HVAC equipment industry practices that complies with this Addendum and applicable Laws ("**Information Security Program**"). The Information Security Program shall include appropriate physical, technical and administrative safeguards, including any safeguards and controls agreed by the Parties in writing, sufficient to protect Customer systems, and Customer's Confidential Information from unauthorized access, destruction, use, modification or disclosure. The Information Security Program shall include appropriate, ongoing training and awareness programs designed to ensure that Trane's employees and agents, and others acting on Trane's, behalf are aware of and comply with the Information Security Program's policies, procedures, and protocols.
6. Monitoring. Trane shall monitor and, at regular intervals consistent with HVAC equipment industry practices, test and evaluate the effectiveness of its Information Security Program. Trane shall evaluate and promptly adjust its Information Security Program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other facts or circumstances that Trane knows or reasonably should know may have a material impact on the security of Customer Confidential Information, Customer systems and Customer property.
7. Audits. Customer acknowledges and agrees that the Trane SOC2 audit report will be used to satisfy any and all audit/inspection requests/requirements by or on behalf of Customer. Trane will make its SOC2 audit report available to Customer upon request and with a signed nondisclosure agreement.
8. Information Security Contact. Trane's information security contact is Local Sales Office.
9. Security Incident Management. Trane shall notify Customer after the confirmation of a Security Incident that affects Customer Confidential Information, Customer systems and Customer property. The written notice shall summarize the nature and scope of the Security Incident and the corrective action already taken or planned.
10. Threat and Vulnerability Management. Trane regularly performs vulnerability scans and addresses detected vulnerabilities on a risk basis. Periodically, Trane engages third-parties to perform network vulnerability assessments and penetration testing. Vulnerabilities will be reported in accordance with Trane's cybersecurity vulnerability reported process. Trane periodically provides security updates and software upgrades.
11. Security Training and Awareness. New employees are required to complete security training as part of the new hire process and receive annual and targeted training (as needed and appropriate to their role) thereafter to help maintain compliance with Security Policies, as well as other corporate policies, such as the Trane Code of Conduct. This includes requiring Trane employees to annually re-acknowledge the Code of Conduct and other Trane policies as appropriate. Trane conducts periodic security awareness campaigns to educate personnel about their responsibilities and provide guidance to create and maintain a secure workplace.
12. Secure Disposal Policies. Policies, processes, and procedures regarding the disposal of tangible and intangible property containing Customer Confidential Information so that wherever possible, Customer Confidential Information cannot be practicably read or reconstructed.
13. Logical Access Controls. Trane employs internal monitoring and logging technology to help detect and prevent unauthorized access attempts to Trane's corporate networks and production systems. Trane's monitoring includes a review of changes affecting systems' handling authentication, authorization, and auditing, and privileged access to Trane production systems. Trane uses the principle of "least privilege" (meaning access denied unless specifically granted) for access to customer data.
14. Contingency Planning/Disaster Recovery. Trane will implement policies and procedures required to respond to an emergency or other occurrence (i.e. fire, vandalism, system failure, natural disaster) that could damage Customer Data or any system that contains Customer Data. Procedures include the following
 - (i) data backups; and
 - (ii) formal disaster recovery plan. Such disaster recovery plan is tested at least annually.

15. Return of Customer Data. If Trane is responsible for storing or receiving Customer Data, Trane shall, at Customer's sole discretion, deliver Customer Data to Customer in its preferred format within a commercially reasonable period of time following the expiration or earlier termination of the Agreement or, such earlier time as Customer requests, securely destroy or render unreadable or undecipherable each and every original and copy in every media of all Customer's Data in Trane's possession, custody or control no later than [90 days] after receipt of Customer's written instructions directing Trane to delete the Customer Data.
16. Background checks Trane shall take reasonable steps to ensure the reliability of its employees or other personnel having access to the Customer Data, including the conducting of appropriate background and/or verification checks in accordance with Trane policies.
17. DISCLAIMER OF WARRANTIES. EXCEPT FOR ANY APPLICABLE WARRANTIES IN THE AGREEMENT, THE SERVICES ARE PROVIDED "AS IS", WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT AS TO SUCH SERVICES SHALL BE WITH CUSTOMER. TRANE DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES AND THE SERVICES PROVIDED HEREUNDER, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE SERVICES WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR RETURN/RESPONSE TO INQUIRIES WITHIN ANY SPECIFIC PERIOD OF TIME.

November 2023

Murfreesboro City School Board

Monitoring: Review: Annually, in January	Descriptor Term: Audits	Descriptor Code: 2.703	Issued Date: 11/28/17 01/15/19
		Rescinds: FM 7	Issued: 11/01/11

1 *General*

2 An audit of all fiscal accounts, including accounts and records of all school student activity finds, shall
3 be made by a certified public accountant following the end of each fiscal year.¹ The certified public
4 accountant shall be selected by the Board.

5 The Director of Schools shall furnish or make copies of the audit available to the proper authorities as
6 prescribed by law,² including the Board.

7 When an administrative change occurs during the fiscal year and the position is responsible for the
8 expenditure of funds, a special audit of accounts involved shall be conducted.

9 The special audit shall be as extensive as the Board may determine.

10 AUDIT FINDINGS³

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11 A corrective action plan shall be developed to address any findings on the annual audit. The plan shall
12 include the following:

13 1. Name(s) of the individual responsible for implementing the plan;

14 2. The corrective action taken or planned; and

15 3. Anticipated completion date.

16 The corrective action plan shall be submitted to the Office of the Comptroller of the Treasury.

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Legal References

1. TCA 49-2-112(a)(1), (c)(1); TCA 49-2-110(a)
2. TRR/MS 0520-01-02-.13(3)(d)
- 2-3. [TCA 9-3-407](#)

Cross References

- Student Activity Funds Management 2.900
Student Solicitations/Fundraising 6.701

Murfreesboro City School Board

Monitoring: Review: Annually, in January	Descriptor Term: Energy Management and Conservation	Descriptor Code: 2.800 3.209	Issued Date: 11/28/17 01/28/20
		Rescinds: FM 14	Issued: 09/01/13

- 1 ~~It is the intent of Murfreesboro City Schools to use energy resources in a safe and efficient manner~~
2 ~~with an ongoing focus on identifying and implementing cost saving measures and developing a~~
3 ~~commitment to identified energy management practices among staff and students. To promote energy~~
4 ~~management and conservation, the Director of Schools shall develop and implement a sustainable~~
5 ~~energy plan for the district. The district will maintain accurate records of energy consumption and cost~~
6 ~~of energy.~~
- 7 ~~It is the policy of Murfreesboro City Schools to ensure that every effort is made to conserve energy and~~
8 ~~natural resources while exercising sound financial management. To minimize the impact increased~~
9 ~~energy costs have on the district's operating budget, energy management efforts are to be implemented~~
10 ~~district wide without infringement upon the educational mission of the district. Maintenance of the~~
11 ~~learning environment shall always take precedence over energy conservation measures.~~
- 12 ~~The judicious use of the various energy systems of each facility will be the joint responsibility of the~~
13 ~~principal and/or site director, district Energy Manager and the Maintenance Supervisor to ensure that~~
14 ~~an efficient energy posture is maintained on a daily basis. It shall be the responsibility of each district~~
15 ~~employee and student to actively participate in conservation efforts.~~
- 16 ~~Accurate records of energy consumption and the cost of energy will be maintained by the district's~~
17 ~~Finance Office. The principal, district Energy Manager and/or Director will provide leadership and~~
18 ~~support for energy management and conservation. All operations of district facilities will be governed~~
19 ~~by established administrative rules and guidelines designed to implement the Board's intent to manage~~
20 ~~and conserve the district's energy resources.~~
- 21 ~~Murfreesboro City Schools shall amend its policy and action plan as required, to strive for the~~
22 ~~following:~~
- 23 ~~1. Continuing compliance with the most recent adoption of American Society of Heating~~
24 ~~Refrigeration Air Conditioning Engineers (ASHRAE) Standard 90.1 (the minimum standard~~
25 ~~for energy efficiency);~~
 - 26 ~~2. Continuing compliance with the most recent version of ASHRAE Standard 62.1 (the minimum~~
27 ~~standard for indoor air quality); and~~
 - 28 ~~3. Continuing compliance with the most recent version of ASHRAE Standard 55 (the minimum~~
29 ~~standard for human comfort).~~

Murfreesboro City School Board

Monitoring: Review: Annually, in January	Descriptor Term: <h2 style="text-align: center;">Credit Cards and Credit Lines</h2>	Descriptor Code: <h3 style="text-align: center;">2.801</h3>	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

1 Employees must first receive written authorization from the Director of Finance to apply for a credit
 2 card in the name of the school or district. “Credit card” means any bank-issued credit card account, store-
 3 issued credit card account (p-card), financial institution-issued credit card account, or any other card
 4 account allowing the holder to purchase goods or services on credit or to transact with the account and
 5 any debit or gift card account related to the receipt of grant funds.

6 District credit cards shall be maintained by the Director of Finance through procedures developed and
 7 maintained in the Finance Department for the purchase of appropriate goods and services for district or
 8 school-related purposes only.¹ All credit cards will be kept in a secure location at the central office and
 9 the account number will remain confidential.

10 Credit card users shall be held accountable for appropriate use of credit cards/credit lines. Use of a credit
 11 card/credit line for unauthorized purchases shall be grounds for disciplinary action, including termination
 12 of employment. Unauthorized purchases include, but are not limited to, cash advances, personal items,
 13 and purchases that do not have adequate supporting documentation. Employees will be required to
 14 reimburse the school district for any unauthorized purchases. If an employee fails to reimburse the
 15 district, the district may deduct the amount from the employee’s paycheck or hold the employee’s
 16 paycheck until payment is made. Cash advances using district credit cards are strictly prohibited.

17 Any employee that purchases items with the credit card or through an approved credit line shall follow
 18 the guidelines outlines below:

- 19 1. Original receipts for each purchase shall be turned in to the bookkeeper or Purchasing Agent
 20 within twenty-four (24) business hours of purchase.
- 21 2. The bookkeeper or Purchasing Agent shall validate that purchases documented by the original
 22 receipt match the physical inventory that was purchased.
- 23 3. All purchases shall be for the school district; under no circumstances can a credit card or credit
 24 line be used to make personal purchases.
- 25 4. The credit card user or department will be responsible for any incurred finance or late charges.

Legal References

1. *Tennessee Internal School Funds Manual*, Section 4-8; Section 4-13 through 4-15

Cross References

- Executive Committee 1.301
 Purchasing 2.805
 Purchase Orders and Contracts 2.808

Murfreesboro City School Board

Monitoring: Review: Annually, in January	Descriptor Term: Magnet Schools	Descriptor Code: 4.205	Issued Date: 12/14/23
		Rescinds:	Issued: 12/14/23

1 Murfreesboro City Schools will maintain open-zoned, schools of choice for the purpose of providing
2 challenging curriculum that is innovative, theme-based and may emphasize certain subjects or adopt
3 distinct instructional models.¹ Student enrollment in magnet schools will be based on application and
4 selection criteria.

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5 The Director of Schools shall establish written standards for the application, qualification, selection, and
6 enrollment of students in magnet schools. These standards shall be objective and take into account
7 multiple criteria that best predict a student's potential for success in the school or program. Students
8 residing outside of Murfreesboro City, but within Rutherford County, may apply for entrance to magnet
9 schools operated by Murfreesboro City, however priority will be given to students residing within the
10 Murfreesboro City school district.

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Legal References

1. 34 CFR 280.4(b)

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Murfreesboro City School Board

Monitoring: Review: Annually, in April	Descriptor Term: Fundraising Activities	Descriptor Code: 6.702 2.601	Issued Date: 05/25/21 04/28/20 09/24/19
		Rescinds: BO 31	Issued: 04/79; 07/01; 09/07; 06/11; 04/23/19

1 School-sponsored fundraising activities shall be for the purpose of supplementing money for
2 school programs and not for replacing funds which are the responsibility of the local board of
3 education. School-sponsored fundraising activities shall, in general, contribute to the educational
4 experience of the students and shall not conflict with the instructional program. A fundraiser is defined
5 as any activity conducted by the school that is intended or designed to generate a profit and provide
6 supplemental revenue for the general fund or an individual club or class account. Fundraising activities
7 may include vending operations, bookstores, pictures, concessions, carnivals, book sales, candy sales,
8 magazine sales, walk-a-thons, car washes, bake sales, or similar activities. Fundraising shall be kept at
9 an absolute minimum and shall serve only to provide for goods and/or services that will enhance the
10 educational objectives of the school as determined by the principal. The Director of Schools shall
11 develop administrative procedures for fundraising activities.

12 ~~A copy of this policy~~ Information regarding fundraising activities shall be included in the parent
13 handbook issued to parents at the beginning of each school year.

14 **DEFINITIONS**

15 ~~Fundraiser~~ — For the purposes of this policy, a fundraiser is any activity conducted by the school that is
16 intended or designed to generate a profit and provide supplemental revenue for the general fund or an
17 individual club or class account. Fundraising activities may include vending operations, bookstores,
18 pictures, concessions, carnivals, book sales, or similar activities. Fundraising activities do not include
19 membership dues, fines, and similar fees.

20 ~~In Murfreesboro City Schools, each fundraiser will be designated either as an ACTIVE fundraiser or a~~
21 ~~PASSIVE fundraiser at the time the event is planned.~~

22 ~~ACTIVE Fundraiser~~ — An Active Fundraiser involves the children during instructional time in the
23 school day.

24 ~~PASSIVE Fundraiser~~ — A Passive Fundraiser does not involve the children during the instructional
25 time during the school day but is held during a non-instructional period of the day, such as, lunch,
26 recess, class changing time, or outside of school hours.

27 **DESIGNATION OF A FUNDRAISER**

1 How a school structures the fundraiser determines whether it is designated as Active or Passive. The
2 principal and the PTO/Booster club shall work together jointly to set up the fundraiser. (i.e., to
3 determine whether to have an assembly to use part of the instructional day, or structure the fundraising
4 event so that it compliments or encompasses a curricular objective, etc.) For example, if an assembly is
5 planned to introduce or conclude the fundraiser (i.e., a party), even for only a 20-minute period during
6 instructional time, the fundraiser becomes an ACTIVE fundraiser, even if the majority of the
7 fundraiser is done during non-instructional time.

8 ~~Examples of current fundraisers are:~~

- 9 ~~1. ACTIVE— School pictures (fall and spring pictures will count as one fundraiser), some “fun-~~
10 ~~runs”, book fairs (maximum of two which will count as one fundraiser), “read a thons” and~~
11 ~~“sausage and cheese sales” if an assembly or celebration party during instructional time is used~~
12 ~~as an incentive, assemblies where children pay to admission to attend (teacher/student~~
13 ~~basketball 30 games, etc.)~~
- 14 ~~2. PASSIVE— Restaurant sponsored days, Kroger Cares, vending machines, bookstores, yearbook~~
15 ~~sales, etc.~~

16 GENERAL GUIDELINES

17 The following general guidelines shall be followed:

- 18 1. Fundraising companies and other salespersons shall obtain permission in writing from the
19 Director of Schools or designee in order to visit the schools.
- 20 2. Any commission payable by companies shall be paid in the form of reduced prices to the
21 students or paid into the activity fund of the school for use by the school. No school employee
22 shall personally benefit from any fundraising activity.
- 23 3. All fundraising activities, including online fundraising activities must have prior written
24 approval from the principal and Director of Schools ~~(or designee)~~. A fundraiser form will be
25 available in the office and through each school bookkeeper and must be completed prior to
26 advertising the fundraiser. The authorization request shall contain the following information:¹
 - 27 a. A list of the proposed fundraising activities,
 - 28 b. Purpose of the fundraising activity,
 - 29 c. Proposed uses of funds raised,
 - 30 d. Expected student involvement in fundraising activity (school-wide or individual class or
31 club), and
 - 32 e. Margin of profit and how it is to be paid to the school, and.
 - 33

f. Method of payment of sales or use tax to vendor or ~~TN~~Tennessee Department of Revenue

4. Students shall not be excused from a regular class to participate in a fundraising activity, unless ~~it is an Active fundraiser~~ approved by the Director of Schools.

5. No grade in a subject or course shall be affected by a student's participation in a fundraising activity. No points shall be added to or removed from grades because of, or to encourage, fundraising participation.

6. Children will not be dismissed from school as a reward for fundraising.

7. ~~Door-to-door~~ sales are strongly discouraged and not endorsed by the school system.

8. The awarding of a grand prize to individual students based on a total dollar amount collected is prohibited. However, it is permissible to award prizes when students reach certain levels. Off-campus activities, such as pizza parties, shall not be used as rewards ~~for~~ children. If end-of-fundraising celebrations are used to encourage participation, no child shall be excluded from the celebration based on the child's fundraising input. For example, if a DJ party or pizza party is planned for the class, all children in the class will be invited to attend.

9. No quotas shall be imposed on students involved, and their efforts shall be voluntary. Students who do not participate in fundraising activities shall not be punished or discriminated against in any way.

10. Each school is limited to four (4) ~~ACTIVE~~ fundraisers occurring during the school day per school year, inclusive of ~~PTA/PTO~~school support organization fundraisers.

~~11.~~ Funds derived from fundraising events to be deposited in the General Fund or the individual school's activity funds can be spent for the following purposes including, but not limited to ~~:-~~

~~a.-~~ materials, supplies, and equipment that enhance the instructional programs provided by the Board through its operational budget.

~~12.~~11. Funds derived from fundraising events may not be used for:

a. Memberships of any kind,

b. Staff gifts and meals~~:-~~

c. Staff training and travel that benefits the student body.

~~13.~~12. Funds derived from fundraising events to be deposited into a restricted account of the individual school's activity funds must be spent for the purposes approved. The purpose shall be reduced to written form and on file at each school for audit purposes.

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1 13. Fundraising events conducted by a school support organization, such as a PTA, PTO, or
 2 Booster Club, shall be governed by the same conditions that apply to the school and comply
 3 with Board Policy 2.404, School Support Organizations.

4
 5 14. ~~District employees who knowingly authorize or allow unapproved fundraising activities~~
 6 ~~involving students may be subject to disciplinary action.~~

7 This policy shall not be construed as preventing a teacher from using instructional or informational
 8 materials even though the materials might include reference to a brand, a product, or a service.

9 LOTTERIES

10 No fundraising activity shall be conducted that distributes prizes or makes awards to winners based
 11 upon the purchase of chances and who are chosen through a random selection process.²

12 ONLINE FUNDRAISING

13 Individual schools may establish school-wide online fundraising accounts. The accounts must meet all
 14 fundraising requirements established by the Board and the *Internal School ~~Uniform Accounting~~*
 15 *~~Policy/Funds~~ Manual*. The principal or designee of each school shall have access to the established
 16 fundraising account to ensure that all funds are properly accounted for, and that the information is
 17 recorded in the school's accounting records by the designated personnel. Online fundraising shall not
 18 be used on behalf and for the benefit of an outside party.

19 Employees shall not engage in online fundraising for personal gain in their official capacity as district
 20 employees nor make any reference to non-school sponsored fundraisers, online or otherwise, that
 21 would lead another to believe such activity is an approved school fundraiser.

22 FUNDRAISING FOR NON-EDUCATIONAL PURPOSES³

23
 24 On approval of the principal, an employee may be authorized to raise and use funds for the following
 25 noneducational purposes:

- 26 1. Bereavement support;
- 27 2. Award recognition;
- 28 3. Employee morale;
- 29 4. Banquets;
- 30 5. Other situations at the principal's discretion.

31 These funds shall be derived from ~~vending machine revenue from machines designated for teacher use~~
 32 ~~only or donations.~~ sources of revenue approved by the Director of Schools.

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Legal References

1. *Tennessee Internal School Uniform Accounting Policy/Funds Manual*, Section 4-3228
2. Tenn. Op. Att’y Gen. No. 03-049 (Apr. 22, 2003)
3. *Public Act of 2019, Chapter No. 134* TCA 49-2-134

Cross References

Student Activity Funds Management 2.900
Staff Gifts and Solicitations 5.605

Agenda Item Title: Open/Closed Zone Schools

Board Meeting Date: February 13, 2024

Department: Student Support Services

Presented by: Trey Duke

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

The Board will consider approval of open zoned schools and seats along with closed zoned schools during the Board meeting.

Murfreesboro City Schools will conduct the open enrollment period for zone waivers from February 29 – April 1, 2024. Parents or guardians of a student seeking to transfer their child to an open zoned school for the 2024-25 school year must apply within this timeline. There are two types of requests that are completed on the same form: (1) new zone waiver and (2) students currently on a zone waiver requesting to remain at the school. On January 27, 2024, enrollment projections and open enrollment for the upcoming 2024-25 school year were shared.

Staff Recommendation

Approval of open zoned schools and seats for the 2024-25 school year.

School	Proposed # Open Seats Available	Closed Grade Levels
Bradley	25 seats total in grades K, 1, 3, 4, 5	2, 6
Cason Lane	50 seats total in all grades	None
Erma Siegel	5 seats total in 1 st grade 10 seats total in 2nd grade	K, 3, 4, 5, 6
Hobgood	25 seats total in grades 2, 4, 6	K, 1, 5

John Pittard	20 seats total in grades K-2	3, 4, 5, 6
Mitchell-Neilson	50 seats total in grades K, 3, 4, 5	2, 6
Northfield	50 seats total in grades K, 1, 2, 3, 4	5, 6
Reeves-Rogers	50 seats total In grades K, 1, 2, 3, 4, 5	6

Closed Zoned Schools with no available seats:

1. Black Fox
2. Overall Creek
3. Salem
4. Scales

For closed zoned schools, only students on existing zone waivers, who have not changed addresses, may apply to continue at these schools.

Please note that Discovery School has a separate application and assessment process.

Fiscal Impact

Not Applicable

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Our Timeline

January 27

Board Workshop

February

Voluntary Campus Tours for Open Zoned Schools

Open Zoned School Tours

February 13

Board approval of open/closed zone schools for '24-25

February 14

Advertise approved open schools and number of seats available in each

Advertise Open Enrollment (*two-week requirement*)

February 29

Open Enrollment period begins (*30-day requirement*).

April 1

Open Enrollment ends at 4:00 PM

April 2

Conduct lottery, if necessary. Notify all applicants via email between April 2 - 5

Proposed Open Zone Schools and Seats Availability

School	Proposed # Open Seats Available	Closed Grade Levels
Bradley	25 seats	2, 6
Cason Lane	50 seats	
Erma Siegel	10 seats in 2nd grade 5 seats in 1 st grade	K, 3, 4, 5, 6
Hobgood	25 seats	K, 1, 5
Mitchell-Neilson	50 seats	2, 6
Northfield	50 seats	5, 6
John Pittard	20 seats in grades K-2	3, 4, 5, 6
Reeves-Rogers	50 seats	6

Closed Zoned Schools

1. Black Fox
2. Overall Creek
3. Salem
4. Scales

Note: Discovery School has a separate application and assessment process.

Murfreesboro City School
Open Enrollment 2024-2025

- January 27:** Board Workshop
- February** Voluntary Campus Tours for Open Zoned Schools
- February 13** Board approval of open/closed zone schools for 2024-25
- February 14:** Advertise open schools and number of seats available in each
- Feb.14 – Feb.28:** Advertise Open Enrollment (*two-week requirement*)
- Feb 29 – April 1:** **Open Enrollment** (*30-day requirement*). Closes at 4:00PM on April 1st.
- April 2:** Conduct lottery, if necessary.
Notify all applicants via email between April 2-5

PROPOSED OPEN ZONE SCHOOLS and SEAT AVAILABILITY

Pending Board approval on February 13, 2024

School	Proposed # Open Seats Available	Closed Grade Levels
Bradley	25 seats total in grades K, 1, 3, 4, 5	2, 6
Cason Lane	50 seats total in all grades	None
Erma Siegel	5 seats total in 1 st grade 10 seats total in 2nd grade	K, 3, 4, 5, 6
Hobgood	25 seats total in grades 2, 4, 6	K, 1, 5
John Pittard	20 seats total in grades K-2	3, 4, 5, 6
Mitchell-Neilson	50 seats total in grades K, 3, 4, 5	2, 6
Northfield	50 seats total in grades K, 1, 2, 3, 4	5, 6
Reeves-Rogers	50 seats total In grades K, 1, 2, 3, 4, 5	6

Murfreesboro City School
Open Enrollment 2024-2025

Closed Zoned Schools with no available seats:

1. Black Fox
2. Overall Creek
3. Salem
4. Scales

For closed zoned schools, only students on existing zone waivers, who have not changed addresses, may apply to continue at these schools.

Please note that Discovery School has a separate application and assessment process.

Agenda Item Title: Approve agreement for purchase and installation of bleachers at Bradley Academy, Mitchell-Neilson Elementary, Reeves-Rogers Elementary, and Discovery School

Board Meeting Date: February 13, 2024

Department: Operations

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Toadvine Enterprises prepared a proposal for the purchase and installation of bleachers at Bradley Academy, Mitchell-Neilson Elementary, Reeves-Rogers Elementary, and Discovery School. This procurement would occur through a cooperative purchasing agreement through The Interlocal Purchasing System with Interkal Products. Toadvine Enterprises is an authorized reseller of Interkal, allowing MCS to procure these products and services through this agreement.

Staff Recommendation

Approve agreement for purchase and installation of bleachers at Bradley Academy, Mitchell-Neilson Elementary, Reeves-Rogers Elementary, and Discovery School

Fiscal Impact

The proposal from Toadvine consisted of four separate project amounts that included: \$65,404.00 for Bradley Academy, a cost of \$65,746.00 for Mitchell-Neilson Elementary, a cost of \$96,037.00 for Discovery School and a cost of \$89,607.00 for Reeves Rogers Elementary. This is a **total purchase price of \$316,794.00 that will be taken from county shared bonds.**

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

TIPS VENDOR AGREEMENT (Part 2)

TIPS RCSP 230801 Auditorium, Stadium, Field Seating, Bleachers, and Installation Services (Part 2)

The following Vendor Agreement (“Agreement”) creates a legal agreement between The Interlocal Purchasing System (“TIPS”), a government purchasing cooperative and Department of Texas Region 8 Education Service Center and (INSERT ENTITY NAME):

(ENTER ENTITY NAME)

its owners, agents, subsidiaries, and affiliates (together, “Vendor”) (individually, “Party”, and collectively the “Parties”) and this agreement shall exclusively govern the contractual relationship (“Agreement”) between the Parties for Part 2 of the related solicitation opportunity. If Vendor proposes and awarded on Part 1, a separate Part 1 Vendor Agreement shall control Part 1 terms.

TIPS, a governmental entity and a national purchasing cooperative seeks to provide a valuable and necessary solution to public entities and qualifying non-profits by performing the public procurement solicitation process and awarding compliant contracts to qualified vendors. Then, where the law of a customer’s jurisdiction allows, instead of public entities and qualifying non-profits expending time, money, and resources on the extensive public procurement process, the use of TIPS allows public entities to quickly select and purchase their preferred products or services from qualified, competitively evaluated vendors through cooperative purchasing.

1. **Purpose.** The purpose of this Agreement is to identify the terms and conditions of the relationship between TIPS and Vendor. Public entities and qualifying non-profits that properly join or utilize TIPS (“TIPS Members”) may elect to “piggyback” off of TIPS’ procurements and agreements where the laws of their jurisdiction allow. TIPS Members are not contractual parties to this Agreement although terms and conditions of this Agreement may ensure benefits to TIPS Members.
2. **Authority.** The Parties agree that the signatories below are individual authorized to enter into this Agreement on behalf of their entity and that they are acting under due and proper authority under applicable law.
3. **Definitions.**
 - a. **TIPS Pricing:** The specific pricing, coefficients, mark-ups, discounts, and other pricing terms and incentives which Vendor submitted and TIPS approved for each respective TIPS Contract awarded to Vendor and all permissible, subsequent pricing updates submitted by Vendor and accepted by TIPS, if any.
4. **Entire Agreement.** This Agreement resulted from TIPS posting a Part 2 “TIPS Solicitation” (RFP, RCSP, RFQ, or other) and Vendor submitting a proposal in response to that posted TIPS Solicitation for evaluation and award. The Parties agree that this Agreement consists of the provisions set forth herein and: (1) The Part 2 TIPS solicitation document resulting in this Agreement; (2) Any Part 2 addenda or clarifications issued in relation to the TIPS solicitation; (3) All Part 2 solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor’s entire Part 2 proposal response to the TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, pricing, accepted responses to questions, and accepted written clarifications of Vendor’s proposal, and; any properly included attachments to this Agreement. All documentation and information listed is hereby incorporated by reference as if set forth herein verbatim. In the event of conflict between the terms herein and one of the incorporated documents the terms and conditions herein shall control.
5. **Vendor’s Specific Warranties, Terms, and License Agreements.** Because TIPS serves public entities and non-profits throughout the nation all of which are subject to specific laws and policies of their jurisdiction, as a matter of standard practice, TIPS does not typically accept a Vendor’s specific “Sale Terms” (warranties, license agreements, master agreements, terms and conditions, etc.) on behalf of all TIPS Members. TIPS may permit Vendor to attach those to this Agreement to display to interested customers what terms may apply to their Supplemental Agreement with Vendor (if submitted by Vendor for that purpose). However, unless this term of the Agreement is negotiated and modified to state otherwise, those specific Sale Terms are not accepted by TIPS on behalf of all TIPS Members and each Member may choose whether to accept, negotiate, or reject those specific Sale Terms, which must be reflected in a separate agreement between Vendor and the Member in order to be effective.
6. **Vendor Identity and Contact Information.** It is Vendor’s sole responsibility to ensure that all identifying vendor information (name, EIN, d/b/a’s, etc.) and contact information is updated and current at all times within the TIPS eBid System and the TIPS Vendor Portal. It is Vendor’s sole responsibility to confirm that all e-correspondence issued from tips-usa.com, ionwave.net, and tipsconstruction.com

to Vendor's contacts are received and are not blocked by firewall or other technology security. Failure to permit receipt of correspondence from these domains and failure to keep vendor identity and contact information current at all times during the life of the contract may cause loss of TIPS Sales, accumulating TIPS fees, missed rebid opportunities, lapse of TIPS Contract(s), and unnecessary collection or legal actions against Vendor. It is no defense to any of the foregoing or any breach of this Agreement that Vendor was not receiving TIPS' electronic communications issued by TIPS to Vendor's listed contacts.

7. **Initiation of TIPS Sales.** When a public entity initiates a purchase with Vendor, if the Member inquires verbally or in writing whether Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether the Member is seeking a TIPS purchase. Once verified, Vendor must include the TIPS Contract Number on all purchase communications and sales documents exchanged with the TIPS Member.
8. **TIPS Sales and Supplemental Agreements.** If awarded, when making a sale under this awarded contract, the terms of the specific TIPS order, including but not limited to: shipping, freight, insurance, delivery, fees, bonding, cost, delivery expectations and location, returns, refunds, terms, conditions, cancellations, defects, order assistance, etc., shall be controlled by the purchase agreement (Purchase Order, Contract, AIA Contract, Invoice, etc.) ("Supplemental Agreement" as used herein) entered into between the TIPS Member Customer and Vendor only. TIPS is not a party to any Supplemental Agreement. All Supplemental Agreements shall include Vendor's Name, as known to TIPS, and TIPS Contract Name and Number. Vendor accepts and understands that TIPS is not a legal party to TIPS Sales and Vendor is solely responsible for identifying fraud, mistakes, unacceptable terms, or misrepresentations for the specific order prior to accepting. Vendor agrees that any order issued from a customer to Vendor, even when processed through TIPS, constitutes a legal contract between the customer and Vendor only. When Vendor accepts or fulfills an order, even when processed through TIPS, Vendor is representing that Vendor has carefully reviewed the order for legality, authenticity, and accuracy and TIPS shall not be liable or responsible for the same. In the event of a conflict between the terms of this TIPS Vendor Agreement and those contained in any Supplemental Agreement, the provisions set forth herein shall control unless otherwise agreed to and authorized by the Parties in writing within the Supplemental Agreement. The Supplemental Agreement shall dictate the scope of services, the project delivery expectations, the scheduling of projects and milestones, the support requirements, and all other terms applicable to the specific sale(s) between the Vendor and the TIPS Member.
9. **Right of Refusal.** Vendor has the right not to sell to a TIPS Member under the awarded agreement at Vendor's discretion unless otherwise required by law.
10. **Reporting TIPS Sales.** If awarded on this TIPS Contract, for the duration of the contract, Vendor shall provide a RS Means line-item estimates to TIPS for each anticipated TIPS project or sale. When a TIPS Member Customer seeks a quote or proposal for a TIPS sale, Vendor shall always supply a line-item estimate to TIPS for review and approval. If awarded, Vendor must report all TIPS Sales to TIPS. If a TIPS sale is initiated by Vendor receiving a TIPS Member's purchase order from TIPS directly, Vendor may consider that specific TIPS Sale reported. Otherwise, with the exception of TIPS Automated Vendors, who have signed an exclusive agreement with TIPS regarding reporting, all TIPS Sales must be reported to TIPS by either: (1) Emailing the line item quote and purchase order or similar purchase document (with Vendor's Name, as known to TIPS, the TIPS Contract Name and Number included, and authorized signatures on behalf of both the TIPS Member and Vendor) to TIPS at tipspo@tips-usa.com with "Confirmation Only" in the subject line of the email within three business days of Vendor's acceptance of the order, or; (2) Within 3 business days of the order being accepted by Vendor, Vendor must login to the TIPS Vendor Portal and successfully self-report all necessary sale information within the Vendor Portal and confirm that it shows up accurately on your current Vendor Portal statement. No other method of reporting is acceptable unless agreed to by the Parties in writing. Failure to report all sales pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com.
11. **TIPS Administration Fees.** The collection of administrative fees by TIPS, a government entity, for performance of these procurement services is required pursuant to Texas Government Code Section 791.011 et. seq. The administration fee ("TIPS Administration Fee") is the amount legally owed by Vendor to TIPS for TIPS Sales made by Vendor. The TIPS Administration Fee amount is typically a set percentage of the amount paid by the TIPS Member for each TIPS Sale, less shipping cost, bond cost, and taxes if applicable and identifiable, which is legally due to TIPS, but the exact TIPS Administration Fee for this Contract is published in the corresponding solicitation and is incorporated herein by reference. TIPS Administration Fees are due to TIPS immediately upon Vendor's receipt of payment, including partial payment, for a TIPS Sale. The TIPS Administration Fee is assessed on the amount paid by the TIPS Member, not on the Vendor's cost or on the amount for which the Vendor sold the item to a dealer or Authorized Reseller. Upon receipt of payment for a TIPS Sale, including partial payment (which renders TIPS Administration Fees immediately due), Vendor shall issue to TIPS the corresponding TIPS Administration Fee payment as soon as possible but not later than thirty-one calendar days following Vendor's receipt of payment. Vendor shall pay TIPS via check unless otherwise agreed to by the Parties in writing. Vendor shall include clear documentation with the issued payment dictating to which sale(s) the amount should be applied. Vendor may create a payment report within their TIPS Vendor Portal which is the preferred documentation dictating to which TIPS Sale(s) the amount should be applied. Failure to pay all TIPS Administration Fees pursuant to this provision may result in immediate cancellation of

Vendor's TIPS Contract(s) for cause at TIPS' sole discretion as well as the initiation of collection and legal actions by TIPS against Vendor to the extent permitted by law. Any overpayment of participation fees to TIPS by Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date that TIPS received the payment will render the overpayment non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect TIPS Administration Fees due to TIPS pursuant to this Agreement.

- 12. Term of the Agreement.** If awarded, the resulting Agreement with TIPS is for approximately two years with an option for renewal for an additional two consecutive one-year terms. The first renewal year shall be automatic unless Vendor notifies TIPS of its objection to the first one-year renewal. The second one-year renewal shall only be effective if offered by TIPS at its sole discretion. If TIPS offers the second renewal option, the Vendor will be notified via email issued to Vendor's then-listed Primary Contact. The renewal option shall be deemed accepted by Vendor unless Vendor notifies TIPS of its objection to the renewal option in writing and confirms receipt by TIPS.

Actual Effective Date: Agreement is effective upon signature by authorized representatives of both Parties. The Effective Date does not affect the "Term Calculation Start Date."

Term Calculation Start Date: To keep the contract term consistent for all vendors awarded under a single TIPS contract, Vendor shall calculate the foregoing term as starting on the last day of the month that "Award Notifications" are anticipated as published in the Solicitation, regardless of the actual Effective Date.

Example of Term Calculation Start Date: If the anticipated "Award Date" published in the Solicitation is May 22, 2023, but extended negotiations delay award until June 27, 2023 (Actual Effective Date), the Term Calculation Start Date shall be May 31, 2023 in this example.

Contract Expiration Date: To keep the contract term consistent for all vendors awarded under a single TIPS contract, the term expiration date shall be two-years from the Term Calculation Start Date.

Example of Contract Expiration Date: If the anticipated "Award Date" published in the Solicitation is May 22, 2023, but extended negotiations delay award until June 27, 2023 (Actual Effective Date), the Term Calculation Start Date shall be May 31, 2023 and the Contract Expiration Date of the resulting initial "three-year" term, (which is subject to an extension(s)) will be May 31, 2026 in this example.

Option(s) for Renewal: Any option(s) for renewal shall begin on the Contract Expiration Date, or the date of the expiration of the prior renewal term where applicable, and continue for the duration specified for the renewal option herein.

Example of Option(s) for Renewal: In this example, if TIPS offers the second one-year renewal and the Contract Expiration Date is May 31, 2026, then the one-year renewal is effective from May 31, 2026 to May 31, 2027.

TIPS may offer to extend Vendor Agreements to the fullest extent the TIPS Solicitation resulting in this Agreement permits.

- 13. TIPS Pricing.** Vendor agrees and understands that for each TIPS Contract that it is awarded, Vendor submitted, agreed to, and received TIPS' approval for pricing, coefficients, mark-ups, discounts, and other pricing terms and incentives which make up Vendor's TIPS Pricing for that TIPS Contract ("TIPS Pricing"). Vendor confirms that Vendor will not add the TIPS Administration Fee as a charge or line-item in a TIPS Sale. Vendor hereby certifies that Vendor shall only offer goods and services through this TIPS Contract if those goods and services fall within the scope of the TIPS Contract and are priced according to Vendor's TIPS Pricing. TIPS reserves the right to review Vendor's proposals and quotes line-item by line-item to determine compliance. However, Vendor contractually agrees that all TIPS quotes and proposals shall be within the original terms of the Vendor's TIPS Pricing (scope, coefficients, percentage markups, and other pricing terms and incentives originally proposed by Vendor) such that TIPS may approve Vendor's quotes and proposals without additional vetting at TIPS discretion.

- 14. Indemnification of TIPS.** VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TIPS, TIPS MEMBERS, TIPS OFFICERS, TIPS EMPLOYEES, TIPS DIRECTORS, AND TIPS TRUSTEES (THE "TIPS INDEMNITEES") FROM AND AGAINST ALL CLAIMS AND SUITS BY THIRD-PARTIES FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES, EXPENSES, FEES, INCLUDING COURT COSTS, ATTORNEY'S FEES, AND EXPERT FEES, ARISING OUT OF OR RELATING TO VENDOR'S PERFORMANCE UNDER THIS AGREEMENT (INCLUDING THE PERFORMANCE OF VENDOR'S OFFICERS, EMPLOYEES, AGENTS,

AUTHORIZED RESELLERS, SUBCONTRACTORS, LICENSEES, OR INVITEES), REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW OR BASED IN WHOLE OR IN PART UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS ON THE PART OF VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, AUTHORIZED RESELLERS, SUBCONTRACTORS, LICENSEES, OR INVITEES. NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED TO BY TIPS. APART FROM THIS INDEMNIFICATION PROVISION REQUIRING INDEMNIFICATION OF THE TIPS INDEMNITEES' ATTORNEY'S FEES AS SET FORTH ABOVE, RECOVERY OF ATTORNEYS' FEES BY THE PREVAILING PARTY IS AUTHORIZED ONLY IF AUTHORIZED BY TEX. EDUC. CODE § 44.032(F).

- 15. Indemnification and Assumption of Risk – Vendor Data.** **VENDOR AGREES THAT IT IS VOLUNTARILY PROVIDING DATA (INCLUDING BUT NOT LIMITED TO: VENDOR INFORMATION, VENDOR DOCUMENTATION, VENDOR'S PROPOSALS, VENDOR PRICING SUBMITTED OR PROVIDED TO TIPS, TIPS CONTRACT DOCUMENTS, TIPS CORRESPONDENCE, VENDOR LOGOS AND IMAGES, VENDOR'S CONTACT INFORMATION, VENDOR'S BROCHURES AND COMMERCIAL INFORMATION, VENDOR'S FINANCIAL INFORMATION, VENDOR'S CERTIFICATIONS, AND ANY OTHER VENDOR INFORMATION OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION SOFTWARE AND SOURCE CODE UTILIZED BY VENDOR, SUBMITTED TO TIPS BY VENDOR AND ITS AGENTS) ("VENDOR DATA") TO TIPS. FOR THE SAKE OF CLARITY, AND WITHOUT LIMITING THE BREADTH OF THE INDEMNITY OBLIGATIONS IN SECTION 14 ABOVE, VENDOR AGREES TO PROTECT, INDEMNIFY, AND HOLD THE TIPS INDEMNITEES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, ACTIONS, DEMANDS, ALLEGATIONS, SUITS, JUDGMENTS, COSTS, EXPENSES, FEES, INCLUDING COURT COSTS, ATTORNEY'S FEES, AND EXPERT FEES AND ALL OTHER LIABILITY OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATING TO: (I) ANY UNAUTHORIZED, NEGLIGENT OR WRONGFUL USE OF, OR CYBER DATA BREACH INCIDENT AND VIRUSES OR OTHER CORRUPTING AGENTS INVOLVING, VENDOR'S DATA, PRICING, AND INFORMATION, COMPUTERS, OR OTHER HARDWARE OR SOFTWARE SYSTEMS, AND; (II) ALLEGATIONS OR CLAIMS THAT ANY VENDOR DATA INFRINGES ON THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD-PARTY OR VENDOR.**
- 16. Intellectual Property Indemnification by Vendor. Procedures Related to Indemnification.** In the event that an indemnity obligation arises, Vendor shall pay all amounts set forth in Section 14 and 15 above (including any settlements) and – if it has accepted its indemnity obligation without qualification – control the legal defense to such claim or cause of action, including without limitation attorney selection, strategy, discovery, trial, appeal, and settlement, and TIPS shall, at Vendor's cost and expense (with respect to reasonable out of pocket costs and expenses incurred by TIPS which shall be reimbursed to TIPS by Vendor), provide all commercially reasonable assistance requested by Vendor. In controlling any defense, Vendor shall ensure that all assertions of governmental immunity and all applicable pleas and defenses shall be promptly asserted.
- 17. Indemnity for Underlying Sales and Supplemental Agreements.** Vendor shall be solely responsible for any customer claims or any disputes arising out of TIPS Sales or any Supplemental Agreement as if sold in the open-market. The Parties agree that TIPS shall not be liable for any claims arising out of Vendor's TIPS Sales or Supplemental Agreements, including but not limited to: allegations of product defect or insufficiency, allegations of service defect or insufficiency, allegations regarding delivery defect or insufficiency, allegations of fraud or misrepresentation, allegations regarding pricing or amounts owed for TIPS sales, and/or allegations regarding payment, over-payment, under-payment, or non-payment for TIPS Sales. Payment/Drafting, overpayment/over-drafting, under-payment/under-drafting, or non-payment for TIPS Sales between customer and Vendor and inspections, rejections, or acceptance of such purchases shall be the exclusive respective obligations of Vendor/Customer, and disputes shall be handled in accordance with the terms of the underlying Supplemental Agreement(s) entered into between Vendor and Customer. Vendor acknowledges that TIPS is not a dealer, subcontractor, agent, or reseller of Vendor's goods and services and shall not be responsible for any claims arising out of alleged insufficiencies or defects in Vendor's goods and services, should any arise.
- 18. Confidentiality of Vendor Data.** Vendor understands and agrees that by signing this Agreement, all Vendor Data is hereby released to TIPS, TIPS Members, and TIPS third-party administrators to effectuate Vendor's TIPS Contract except as provided for herein. The Parties agree that Vendor Data is accessible by all TIPS Members as if submitted directly to that TIPS Member Customer for purchase consideration. If Vendor otherwise considers any portion of Vendor's Data to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code (the "Public Information Act") or other law(s) and orders, Vendor must have identified the claimed confidential materials through proper execution of the Confidentiality Claim Form which is required to be submitted as part of Vendor's proposal resulting in this Agreement and incorporated by reference. The Confidentiality Claim Form included in Vendor's proposal and incorporated herein by reference is the sole indicator of whether Vendor considers any Vendor Data confidential in the event TIPS receives a Public Information Request. If TIPS receives a request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor Data deemed confidential by you in this manner, TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination and opinion. In the event that TIPS receives a written request for information pursuant to the Public Information Act that affects Vendor's interest in any information or data furnished to TIPS by Vendor, and TIPS requests an opinion from the Attorney General, Vendor may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the

Public Information Act. Vendor is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Public Information Act. Notwithstanding any other information provided in this solicitation or Vendor designation of certain Vendor Data as confidential or proprietary, Vendor's acceptance of this TIPS Vendor Agreement constitutes Vendor's consent to the disclosure of Vendor's Data, including any information deemed confidential or proprietary, to TIPS Members or as ordered by a Court or government agency, including without limitation the Texas Attorney General. Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or as required by law.

19. Vendor's Subcontractors. TIPS recognizes that many vendors operate in the open market through the use of subcontractors. For that reason, TIPS permits Vendor to utilize subcontractors as authorized and permitted by the TIPS Member Customer. However, all purchase documents must include: (1) Vendor's Name, as known to TIPS, and; (2) Vendor's TIPS Contract Name and Number under which it is making the TIPS Sale. Vendor must report the sale pursuant to the terms herein and Vendor agrees that it is legally responsible for all reporting and fee payment as described herein for TIPS Sales even when subcontractors are utilized. The TIPS Administration Fee is assessed on the amount paid by the TIPS Member to Vendor. The Parties intend that Vendor shall be responsible and for actions of subcontractors during a TIPS Sale. Vendor agrees that it is voluntarily authorizing subcontractors and in doing so, Vendor agrees that it is doing so at its own risk and agrees to protect, indemnify, and hold TIPS harmless in accordance with Sections 14-17 above related to subcontractor TIPS Sales made pursuant to this Agreement or purporting to be made pursuant to this Agreement that may be asserted against Vendor whether rightfully brought or otherwise. The Parties further agree that it is no defense to Vendor's breach of this Agreement that a subcontractor caused Vendor of breach this Agreement.

20. Circumvention of TIPS Sales. When a public entity initiates a purchase with Vendor, if the Member inquires verbally or in writing whether Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether the Member is seeking a TIPS purchase. Any request for quote, customer communication, or customer purchase initiated through or referencing a TIPS Contract shall be completed through TIPS pursuant to this Agreement. Any encouragement or participation by Vendor in circumventing a TIPS sale being completed may result in immediate termination of Vendor's TIPS Contract(s) for cause as well as preclusion from future TIPS opportunities at TIPS sole discretion.

21. State of Texas Franchise Tax. By signature hereon, Vendor hereby certifies that Vendor is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Chapter 171 of the Texas Tax Code.

22. Termination.

- A) Termination for Convenience. TIPS may, by written notice to Vendor, terminate this Agreement for convenience, in whole or in part, at any time by giving thirty (30) days' written notice to Vendor of such termination, and specifying the effective date thereof.
- B) Termination for Cause. If Vendor fails to materially perform pursuant to the terms of this Agreement, TIPS shall provide written notice to Vendor specifying the default. If Vendor does not cure such default within thirty (30) days, TIPS may terminate this Agreement, in whole or in part, for cause. If TIPS terminates this Agreement for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience.
- C) Vendor's Termination. If TIPS fails to materially perform pursuant to the terms of this Agreement, Vendor shall provide written notice to TIPS specifying the default ("Notice of Default"). If TIPS does not cure such default within thirty (30) days, Vendor may terminate this Agreement, in whole or in part, for cause. If Vendor terminates this Agreement for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience.
- D) Upon termination, all TIPS Sale orders previously accepted by Vendor shall be fulfilled and Vendor shall be paid for all TIPS Sales executed pursuant to the applicable terms. All TIPS Sale orders presented to Vendor but not fulfilled by Vendor, prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. TIPS shall submit to Vendor an invoice for any outstanding TIPS Administration Fees and approved expenses and Vendor shall pay such fees and expenses within 30 calendar days of receipt of such valid TIPS invoice. Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS' sole discretion and that any Vendor may be removed from the TIPS program at any time with or without cause. This termination clause does not affect TIPS Sales Supplemental Agreements pursuant to this term regarding termination and the Survival Clause term.

- E) Vendor hereby waives any and all claims for damages, including, but not limited, to consequential damages or lost profits, that might arise from TIPS' act of terminating this Agreement.

- 23. Survival Clause.** It is the intent of the Parties that this Agreement and procurement method applies to any TIPS Sale made during the life of this Agreement even if made on or near the Contract Expiration Date as defined herein. Thus, all TIPS Sales, including but not limited to: leases, service agreements, license agreements, open purchase orders, warranties, and contracts, even if they extend months or years past the TIPS Contract Expiration Date, shall survive the expiration or termination of this Agreement subject to the terms and conditions of the Supplemental Agreement between Customer and Vendor or unless otherwise specified herein.
- 24. Audit Rights.** Due to transparency statutes and public accountability requirements of TIPS and TIPS Members, Vendor shall at their sole expense, maintain documentation of all TIPS Sales for a period of three years from the time of the TIPS Sale. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Vendor's TIPS Pricing or TIPS Sales with thirty-days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without said notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with Vendor's TIPS Pricing, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format, and at the location acceptable to TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member. These audit rights shall survive termination of this Agreement for a period of one (1) year from the effective date of termination.
- 25. Conflicts of Interest.** The Parties confirm that they have not offered, given, or accepted, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, service to the other in connection with this Agreement. Vendor affirms that, to the best of Vendor's knowledge, this Agreement has been arrived at independently, and is awarded without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement. Vendor agrees that it has disclosed any necessary affiliations with Region 8 Education Service Center and the TIPS Department, if any, through the Conflict of Interest attachment provided in the solicitation resulting in this Agreement.
- 26. Volume of TIPS Sales.** Nothing in this Agreement or any TIPS communication may be construed as a guarantee that TIPS or TIPS Members will submit any TIPS orders to Vendor at any time.
- 27. Compliance with the Law.** The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations applicable to their entity in connection with the programs contemplated under this Agreement.
- 28. Severability.** If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such term(s) or provision(s) shall be deemed restated to reflect the original intention of the Parties as nearly as possible in accordance with applicable law and the remainder of this Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such holding causes the obligations of the Parties hereto to be impossible to perform or shall render the terms of this Agreement to be inconsistent with the intent of the Parties hereto.
- 29. Force Majeure.** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement through no fault of its own then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon. Upon delivering such notice, the obligation of the affected party, so far as it is affected by such Force Majeure as described, shall be suspended during the continuance of the inability then claimed but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. In the event that Vendor's obligations are suspended by reason of Force Majeure, all TIPS Sales accepted prior to the Force Majeure event shall be the legal responsibility of Vendor and the terms of the TIPS Sale Supplemental Agreement shall control Vendor's failure to fulfill for a Force Majeure event.
- 30. Immunity.** Vendor agrees that nothing in this Agreement shall be construed as a waiver of sovereign or government immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

31. Insurance Requirements. Vendor agrees to maintain the following minimum insurance requirements for the duration of this Agreement. All policies held by Vendor to adhere to this term shall be written by a carrier with a financial size category of VII and at least a rating of "A-" by A.M. Best Key Rating Guide. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member. Vendor agrees that when Vendor or its subcontractors are liable for any damages or claims, Vendor's policy, shall be primary over any other valid and collectible insurance carried by the Member or TIPS.

General Liability: \$1,000,000 each Occurrence/Aggregate
Automobile Liability: \$300,000 Includes owned, hired & non-owned
Workers' Compensation: Statutory limits for the jurisdiction in which the Vendor performs under this Agreement. If Vendor performs in multiple jurisdictions, Vendor shall maintain the statutory limits for the jurisdiction with the greatest dollar policy limit requirement.
Umbrella Liability: \$1,000,000 each Occurrence/Aggregate

32. Waiver. No waiver of any single breach or multiple breaches of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting regarding any breach of any provision shall be construed to be a waiver of such breach.

33. Binding Agreement. This Agreement shall be binding and inure to the benefit of the Parties hereto and their respective heirs, legal successors, and assigns.

34. Headings. The paragraph headings contained in this Agreement are included solely for convenience of reference and shall not in any way affect the meaning or interpretation of any of the provisions of this Agreement.

35. Choice of Law and Venue. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. Any proceeding, claim, action, or alternative dispute resolution arising out of or relating to this Agreement or involving TIPS shall be brought in a State Court of competent jurisdiction in Camp County, Texas, or if Federal Court is legally required, a Federal Court of competent jurisdiction in the Eastern District of Texas, and each of the Parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or and contemplated transaction in any other court. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum.

36. Relationship of the Parties. Nothing contained in this Agreement shall be construed to make one Party an agent of the other Party nor shall either party have any authority to bind the other in any respect, unless expressly authorized by the other party in writing. The Parties are independent contractors and nothing in this Agreement creates a relationship of employment, trust, agency or partnership between them.

37. Assignment. No assignment of this Agreement or of any duty or obligation of performance hereunder, shall be made in whole or in part by a Party hereto without the prior written consent of the other Party. Written consent of TIPS shall not be unreasonably withheld.

38. Minimum Condition and Warranty Requirements for TIPS Sales. All goods quoted or sold through a TIPS Sale shall be new unless clearly stated otherwise in writing. All new goods and services shall include the applicable manufacturers minimum standard warranty unless otherwise agreed to in the Supplemental Agreement.

39. Minimum Customer Support Requirements for TIPS Sales. Vendor shall provide timely and commercially reasonable support for TIPS Sales or as agreed to in the applicable Supplemental Agreement.

40. Minimum Shipping Requirements for TIPS Sales. Vendor shall ship, deliver, or provide ordered goods and services within a commercially reasonable time after acceptance of the order. If a delay in delivery is anticipated, Vendor shall notify the TIPS Member

as to why delivery is delayed and provide an updated estimated time for completion. The TIPS Member may cancel the order if the delay is not commercially acceptable or not consistent with the Supplemental Agreement applicable to the order.

41. **Minimum Vendor License Requirements.** Vendor shall maintain, in current status, all federal, state, and local licenses, bonds and permits required for the operation of the business conducted by Vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the TIPS Agreement. TIPS and TIPS Members reserve the right to stop work and/or cancel a TIPS Sale or terminate this or any TIPS Sale Supplemental Agreement involving Vendor if Vendor's license(s) required to perform under this Agreement or under the specific TIPS Sale have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.
42. **Minimum Vendor Legal Requirements.** Vendor shall remain aware of and comply with this Agreement and all local, state, and federal laws governing the sale of products/services offered by Vendor under this contract. Such applicable laws, ordinances, and policies must be complied with even if not specified herein.
43. **Minimum Site Requirements for TIPS Sales (when applicable to TIPS Sale).**

Cleanup: When performing work on site at a TIPS Member's property, Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by the TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Vendor shall not begin a project for which a TIPS Member has not prepared the site, unless Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in the TIPS Sale Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered Sex Offender Restrictions: For work to be performed at schools, Vendor agrees that no employee of Vendor or a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the TIPS Sale at the TIPS Member's discretion. Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

Safety Measures: Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking: Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes, ordinances, and policies.

44. **Wage Rates:** TIPS Member Customers often have to designate either Davis Bacon Act wage rates or similar wage rates for their construction contracts. The RS Means Unit Price Book accounts for local wage rates and the contractor must comply with RS Means and any additional wage rate requirements of the TIPS Member Customer.
45. **Engineering and Architectural Services:** It is impermissible in Texas and some other jurisdictions for engineering and architectural services (A&E) to be procured or provided through an interlocal cooperative contract such as this one. The TIPS Member Customer, if required by law, must engage independent A&E providers according to the laws of their jurisdiction.
46. **Payment for TIPS Sales.** TIPS Members may make payments for TIPS Sales directly to Vendor, or as otherwise agreed to in the applicable Supplemental Agreement after receipt of the invoice and in compliance with applicable payment statutes. Regardless of how payment is issued or received for a TIPS Sale, Vendor is responsible for all reporting and TIPS Administration Fee payment requirements as stated herein.
47. **Marketing.** Vendor agrees to allow TIPS to use their name and logo within the TIPS website, database, marketing materials, and advertisements unless Vendor negotiates this term to include a specific acceptable-use directive. Any use of TIPS' name and logo or any form of publicity, inclusive of press release, regarding this Agreement by Vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to tips@tips-usa.com. For marketing efforts directed to TIPS Members, Vendor must request and execute a separate Joint Marketing Disclaimer, at marketing@tips-usa.com, before TIPS can release contact information for TIPS Member entities for the purpose of marketing your TIPS contract(s). Vendor must adhere to strict Marketing

Requirements once a disclaimer is executed. The Joint Marketing Disclaimer is a supplemental agreement specific to joint marketing efforts and has no effect on the terms of the TIPS Vendor Agreement. Vendor agrees that any images, photos, writing, audio, clip art, music, or any other intellectual property ("Property") or Vendor Data utilized, provided, or approved by Vendor during the course of the joint marketing efforts are either the exclusive property of Vendor, or Vendor has all necessary rights, license, and permissions to utilize said Property in the joint marketing efforts. Vendor agrees that they shall indemnify and hold harmless TIPS and its employees, officers, agents, representatives, contractors, assignees, designees, and TIPS Members from any and all claims, damages, and judgments involving infringement of patent, copyright, trade secrets, trade or services marks, and any other intellectual or intangible property rights and/or claims arising from the Vendor's (including Vendor's officers', employees', agents', Authorized Resellers', subcontractors', licensees', or invitees') unauthorized use or distribution of Vendor Data and Property.

- 48. Tax Exempt Status of TIPS Members.** Most TIPS Members are tax exempt entities and the laws and regulations applicable to the specific TIPS Member customer shall control.
- 49. Automatic Renewal Limitation for TIPS Sales.** No TIPS Sale may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated into a TIPS Sale Supplemental Agreement shall only be valid and enforceable when Vendor received written confirmation of acceptance of the renewal term from the TIPS Member for the specific renewal term. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. Any TIPS Sale Supplemental Agreement containing an "Automatic Renewal" clause that conflicts with these terms is rendered void and unenforceable.
- 50. Choice of Law Limitation for TIPS Sales.** Vendor agrees that if any "Choice of Law" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Choice of Law" applicable to the TIPS Sale agreement/contract between Vendor and TIPS Member shall be the state where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Choice of Law" clause that conflicts with these terms is rendered void and unenforceable.
- 51. Venue Limitation for TIPS Sales.** Vendor agrees that if any "Venue" provision is included in any TIPS Sale Agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Venue" for any litigation or alternative dispute resolution shall be in the state and county where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Venue" clause that conflicts with these terms is rendered void and unenforceable.
- 52. Indemnity Limitation for TIPS Sales.** Texas and other jurisdictions restrict the ability of governmental entities to indemnify others. Vendor agrees that if any "Indemnity" provision which requires the TIPS Member to indemnify Vendor is included in any TIPS sales agreement/contract between Vendor and a TIPS Member, that clause must either be stricken or qualified by including that such indemnity is only permitted, "to the extent permitted by the laws and constitution of [TIPS Member's State]" unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing an "Indemnity" clause that conflicts with these terms is rendered void and unenforceable.
- 53. Arbitration Limitation for TIPS Sales.** Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause may not require that the arbitration is mandatory or binding. Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause provides for only voluntary and non-binding arbitration unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Arbitration" clause that conflicts with these terms is rendered void and unenforceable.

In Witness Whereof, the parties hereto, each acting under due and proper authority, have signed this Agreement.

TIPS VENDOR AGREEMENT SIGNATURE FORM
TIPS RFP 230801 Auditorium, Stadium, Field Seating,
Bleachers, and Installation Services(Part 2)

Vendor Name: _____

Vendor Address: _____

City: _____ State: _____ Zip Code: _____

Vendor Authorized Signatory Name: _____

Vendor Authorized Signatory Title: _____

Vendor Authorized Signatory Phone: _____

Vendor Authorized Signatory Email: _____

Vendor Authorized Signature: Matt J. LaLonde Date: _____

(The following is for TIPS completion only)

TIPS Authorized Signatory Name: _____

TIPS Authorized Signatory Title: _____

TIPS Authorized Signature: David Wayne Fitts Date: 10/20/2023



230801 Interkal Supplier Response

Event Information

Number: 230801
Title: Auditorium, Stadium, Field Seating, Bleachers, and Installation Services (2 Part with JOC)
Type: Request for Proposal
Issue Date: 8/3/2023
Deadline: 9/15/2023 03:00 PM (CT)
Notes: This is a solicitation issued by The Interlocal Purchasing System (TIPS), a department of Texas Region 8 Education Service Center. It is an Indefinite Delivery, Indefinite Quantity ("IDIQ") solicitation. It will result in contracts that provide, through adoption/"piggyback" an indefinite quantity of supplies/services, during a fixed period of time, to TIPS public entity and qualifying non-profit "TIPS Members" throughout the nation. Thus, there is no specific project or scope of work to review. Rather this solicitation is issued as a prospective award for utilization when any TIPS Member needs the goods or services offered during the life of the agreement.

This is a two part solicitation. Part 1 is solicited for TIPS sales that are not considered a "public work" construction project. Part 1 permits the sale of goods and non-construction/non-"public work" services such as maintenance and minor repairs. Part 2 Job Order Contract (JOC) is solicited for projects considered by your TIPS Member Customers to be a "public work" construction project. The determination of whether or not a TIPS sale amounts to a "public work" construction project requiring a Part 2 JOC contract is made by the TIPS Member Customer at the time of each TIPS sale. Thus, Vendors are encouraged to respond to both Parts 1 and 2 in case your TIPS Member Customers require that a sale be made under one Part or the other. However,

responding to both Parts is not required.

IF YOU CURRENTLY HOLDS TIPS CONTRACT 20080101 AND/OR 20080102 Auditorium, Stadium, Field Seating, Bleachers, and Installation Services (2 Part with JOC) ("20080101 AND/OR 20080102") , YOU MUST RESPOND TO THIS SOLICITATION TO PREVENT LAPSE OF CONTRACT UNLESS YOU HOLD ANOTHER CURRENT TIPS CONTRACT THAT COVERS ALL OF YOUR SEATING OFFERINGS. THIS AWARDED CONTRACT WILL REPLACE YOUR EXPIRING TIPS CONTRACT 20080101 AND/OR 20080102.

IF YOU HOLD ANOTHER TIPS CONTRACT OTHER THAN 20080101 AND/OR 20080102 WHICH COVERS ALL OF YOUR SEATING OFFERINGS AND YOU ARE SATISFIED WITH IT, THERE IS NO NEED TO RESPOND TO THIS SOLICITATION UNLESS YOU PREFER TO HOLD BOTH CONTRACTS.

Contact Information

Address: Region 8 Education Service Center
4845 US Highway 271 North
Pittsburg, TX 75686
Phone: +1 (866) 839-8477
Email: bids@tips-usa.com

Interkal Information

Contact: Matt LaLonde
Address: 5981 East Cork Street
Kalamazoo, MI 49048
Phone: (269) 978-2244
Fax: (269) 349-6530
Email: mlalonde@interkal.com
Web Address: www.interkal.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Matt J. LaLonde

Signature

Submitted at 9/6/2023 03:55:33 PM (CT)

mlalonde@interkal.com

Email

Requested Attachments

Vendor Agreement (Part 1)

230801 Vendor Agreement (Part 1) (1).pdf

If responding to Part 1, the Vendor Agreement must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, Vendor Name placed in the line provided at the top, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement (Part 1), Vendor may assert so in the Attribute Questions and those shall be addressed during evaluation.

Pricing Form 2 (Part 1)

230801 Pricing Form 2 (Part 1) (1).xlsx

If responding to Part 1, Pricing Form 2 (Part 1) must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed as instructed, and uploaded to this location.

Pricing Form 1 (Part 1)

230801 Pricing Form 1 (Part 1) (1).xlsx

If responding to Part 1, Pricing Form 1 (Part 1) must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed as instructed, and uploaded to this location.

Alternate or Supplemental Pricing Documents (Part 1)

No response

Optional. If responding to Part 1, when completing Pricing Form 1 (Part 1) & Pricing Form 2 (Part 1), you direct TIPS to view additional, alternate, or supplemental pricing documentation, you may upload that Part 1 documentation.

Vendor Agreement Signature Form (Part 1)

230801 Vendor Agreement Signature Form (Part 1).pdf

If responding to Part 1 the Vendor Agreement Signature Form (Part 1) must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement (Part 1), Vendor may leave the signature line of this page blank and assert so in the Attribute Questions and those shall be addressed during evaluation.

Part 2 Required Bonding Capacity Letter

Interkal 090623.pdf

If proposing on Part 2, Vendor is required to upload a Bonding Capacity Letter from its surety, as described herein, at this location. Please see the attachment entitled "Instructions and Sample - Part 2 Required Bonding Capacity Letter" for complete instructions. . On Part 2, Vendor will be scored on the aggregate bonding capacity displayed in the accepted letter. Vendor must provide a current letter (issued on or after the first day of the month preceding the date on which the solicitation was posted) from its surety verifying Vendor's bonding capacity as described herein. (Ex. if the solicitation/bid posted on February 4, 2022, the letter must be dated on or after January 1 2022. The letter must be issued from Vendor's Surety companies, on surety company letterhead, must specify the maximum bonding capacity of the Vendor, and must be signed by an authorized representative of the surety company. The issuing surety must be authorized to do business in the State of Texas and must be listed on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570).

Vendor Agreement (Part 2)

230801 Vendor Agreement - JOC
(Part 2).pdf

If responding to Part 2, the Vendor Agreement (Part 2) must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement (Part 2), Vendor may assert so in the Attribute Questions and those shall be addressed during evaluation.

Vendor Agreement Signature Form (Part 2)

230801 Vendor Agreement
Signature Form (Part 2).pdf

If responding to Part 2, the Vendor Agreement Signature Form (Part 2) must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement (Part 2), Vendor may leave the signature line of this page blank and assert so in the Attribute Questions and those shall be addressed during evaluation.

Supplemental Vendor Information (Supplemental Vendor Information Only)

Interkal-Master-Catalog-2023.pdf

Optional. If Vendor would like to display or include any brochures, promotional documents, marketing materials, or other Vendor Information for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Vendor’s Warranties, Terms, and Conditions (Supplemental Vendor Information Only)

NEW 10 year - 5 limited warranty
2_1_2020.pdf

Optional. If Vendor would like to display any standard warranties, terms, or conditions which are often applicable to their offerings for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Reference Form

230801 Reference Form JOC
(Parts 1 & 2).xls

The Reference Form must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. The Reference Form must be uploaded in Excel format.

Required Confidentiality Claim Form

230801 Required Confidentiality
Claim Form.pdf

The Required Confidentiality Claim Form must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. This is the only way for Vendor to assert confidentiality of any information submitted.

Conflict of Interest Questionnaire - Form CIQ

No response

Do not upload this form unless you have a reportable conflict with TIPS. There is an Attribute entitled “Conflict of Interest Questionnaire Requirement” immediately followed by an Attribute entitled “Conflict of Interest Questionnaire Requirement – Form CIQ – Continued.” Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Conflict of Interest Questionnaire – Form CIQ must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded at this location.

Disclosure of Lobbying Activities - Standard Form - LLL

No response

Do not upload this form unless Vendor has reportable lobbying activities. There are Attributes entitled, “2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment – Continued.” Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Disclosure of Lobbying Activities – Standard Form - LLL must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location.

Current Form W-9

W9.pdf

Vendor must upload their current IRS Tax Form W-9. The legal name, EIN, and d/b/a's listed should match the information provided herein exactly. This form will be utilized by TIPS to properly identify your entity.

Certificates & Licenses (Supplemental Vendor Information Only)

Engineer Qualifications 2-24-21.pdf

Optional. If Vendor would like to display any applicable certificates or licenses (including HUB certificates) for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Vendor Logo (Supplemental Vendor Information Only)

Interkal-Global-Logo_URL-082514-Pantone-P50-8U.png

Optional. If Vendor desires that their logo be displayed on their public TIPS profile for TIPS and TIPS Member viewing, Vendor may upload that logo at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Bid Attributes

1 Disadvantaged/Minority/Women Business & Federal HUBZone

Some participating public entities are required to seek Disadvantaged/Minority/Women Business & Federal HUBZone ("D/M/WBE/Federal HUBZone") vendors. Does Vendor certify that their entity is a D/M/WBE/Federal HUBZone vendor?

If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location.

NO

2 Historically Underutilized Business (HUB)

Some participating public entities are required to seek Historically Underutilized Business (HUB) vendors as defined by the Texas Comptroller of Public Accounts Statewide HUB Program. Does Vendor certify that their entity is a HUB vendor?

If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location.

No

3 National Coverage

Can the Vendor provide its proposed goods and services to all 50 US States?

Yes - All 50 States

4 States Served

If Vendor answered "No" to the question entitled "National Coverage," please list all states where vendor can provide the goods and services proposed directly below. Your response may dictate which potential TIPS Member customers consider purchasing your offerings.

No response

5 Description of Vendor Entity and Vendor's Goods & Services

If awarded, this description of Vendor and Vendor's goods and services will appear on the TIPS website for customer/public viewing.

Interkal is a leading manufacturer of spectator seating. Our products include, telescopic bleachers, telescopic platforms with chairs, and fixed seating. Our nationwide, exclusive dealer network can see a project through from design to sign off.

6	Primary Contact Name Please identify the individual who will be primarily responsible for all TIPS matters and inquiries for the duration of the contract. <input type="text" value="Matt LaLonde"/>
----------	---

7	Primary Contact Title Primary Contact Title <input type="text" value="President"/>
----------	---

8	Primary Contact Email Please enter a valid email address that will definitely reach the Primary Contact. <input type="text" value="mlalonde@interkal.com"/>
----------	--

9	Primary Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). Please provide the accurate and current phone number where the individual who will be primarily responsible for all TIPS matters and inquiries for the duration of the contract can be reached directly. <input type="text" value="2699782244"/>
----------	--

10	Primary Contact Fax Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="No response"/>
-----------	---

11	Primary Contact Mobile Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="2697600745"/>
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12	Secondary Contact Name Please identify the individual who will be secondarily responsible for all TIPS matters and inquiries for the duration of the contract. <input type="text" value="Linda Pace"/>
-----------	---

13	Secondary Contact Title Secondary Contact Title <input type="text" value="Estimating Supervisor"/>
-----------	---

14	Secondary Contact Email Please enter a valid email address that will definitely reach the Secondary Contact. <input type="text" value="lpace@interkal.com"/>
-----------	---

1 5	Secondary Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). Please provide the accurate and current phone number where the individual who will be secondarily responsible for all TIPS matters and inquiries for the duration of the contract can be reached directly. <input type="text" value="2699782259"/>
--------	--

1 6	Secondary Contact Fax Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="No response"/>
--------	---

1 7	Secondary Contact Mobile Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="No response"/>
--------	--

1 8	Administration Fee Contact Name Please identify the individual who will be responsible for all payment, accounting, and other matters related to Vendor's TIPS Administration Fee due to TIPS for the duration of the contract. <input type="text" value="Bev McKamey"/>
--------	---

1 9	Administration Fee Contact Email Please enter a valid email address that will definitely reach the Administration Fee Contact. <input type="text" value="bmckamey@interkal.com"/>
--------	--

2 0	Administration Fee Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="2699782266"/>
--------	---

2 1	Purchase Order and Sales Contact Name Please identify the individual who will be responsible for receiving and processing purchase orders and sales under the TIPS Contract. <input type="text" value="Brent Weessies"/>
--------	---

2 2	Purchase Order and Sales Contact Email Please enter a valid email address that will definitely reach the Purchase Order and Sales Contact. <input type="text" value="bweessies@interkal.com"/>
--------	---

2 3	Purchase Order and Sales Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="2699782288"/>
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2 4	Company Website Company Website (Format - www.company.com) <input type="text" value="www.interkal.com"/>
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2
5

Entity D/B/A's and Assumed Names

You must confirm that you are responding to this solicitation under your legal entity name. Go now to your Supplier Profile in this eBid System and confirm that your profile reflects your "Legal Name" as it is listed on your W9.

In this question, please identify all of your entity's assumed names and D/B/A's. Please note that you will be identified publicly by the Legal Name under which you respond to this solicitation unless you organize otherwise with TIPS after award.

Interkal

2
6

Primary Address

Primary Address

5981 East Cork Street

2
7

Primary Address City

Primary Address City

Kalamazoo

2
8

Primary Address State

Primary Address State (2 Digit Abbreviation)

MI

2
9

Primary Address Zip

Primary Address Zip

49048

3
0

Search Words Identifying Vendor

Please list all search words and phrases to be included in the TIPS database related to your entity. **Do not** list words which are not associated with the bid category/scope (See bid title for general scope). This will help users find you through the TIPS website search function. You may include product names, manufacturers, specialized services, and other words associated with the scope of this solicitation.

bleachers, spectator seating, auditorium seating, stadium seating, fixed seating, retractable seating, telescopic seating, upholstered seating, benches

3
1

Certification of Vendor Residency (Required by the State of Texas)

Does Vendor's parent company or majority owner:

(A) have its principal place of business in Texas; **or** (B) employ at least 500 persons in Texas?

Texas Education Code Section 44.031 requires that this information be considered in evaluation for certain contracts. However, Vendor response does not affect points, scoring, or potential award.

No

3
2

Vendor's Principal Place of Business (City)

In what city is Vendor's principal place of business located?

Kalamazoo

3 3	Vendor's Principal Place of Business (State) In what state is Vendor's principal place of business located? <input type="text" value="Michigan"/>
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3 4	Vendor's Years in Business How many years has the business submitting this proposal been operating in its current capacity and field of work? <input type="text" value="40"/>
----------------------	--

3 5	Certification Regarding Entire TIPS Agreement for Part 1 and Part 2 Contracts <p>This is a two part solicitation. Part 1 is solicited for TIPS sales that are not considered a "public work" construction project. Part 1 permits the sale of goods and non-construction/non-"public work" services such as maintenance and minor repairs. Part 2 Job Order Contract (JOC) is solicited for projects considered by your TIPS Member Customers to be a "public work" construction project. The determination of whether or not a TIPS sale amounts to a "public work" construction project requiring a Part 2 JOC contract is made by the TIPS Member Customer at the time of each TIPS sale. Thus, Vendors are encouraged to respond to both Parts 1 and 2 in case your TIPS Member Customers require that a sale be made under one Part or the other. However, responding to both Parts is not required. If Vendor responds and is awarded to both Parts, Vendor will have one contract for Part 1 and a separate contract for Part 2.</p> <p>Vendor agrees that, if awarded, Vendor's final TIPS Contract(s), for either Part 1, Part 2, or both Parts, will consist of the provisions set forth in the corresponding finalized TIPS Vendor Agreement, Vendor's responses to these attribute questions, and: (1) The TIPS solicitation document resulting in the Agreement; (2) Any addenda or clarifications issued in relation to the corresponding TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor's entire proposal response to the corresponding TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, accepted pricing, accepted responses to questions, and accepted written clarifications of Vendor's proposal, and; any properly included attachments to the TIPS Contract.</p> <p>Does Vendor agree? <input type="text" value="Yes, Vendor agrees"/></p>
----------------------	--

**3
6** Minimum Percentage Discount Offered to TIPS Members on all Part 1 Goods and Services (READ CAREFULLY)

Please read thoroughly and carefully as an error on your response can render your Part 1 contract award unusable. If you are not proposing on Part 1, you must still respond to proceed but it will not apply to you unless you decide to propose and are awarded on Part 1.

TIPS Members often turn to TIPS Contracts for ease of use and to receive discounted pricing.

If awarded on Part 1, what is the minimum percentage discount that you can offer TIPS Members off of all Part 1 goods and service pricing (whether offered through Pricing Form 1, Pricing Form 2, or in another accepted format) that you offer? Only limited goods/services specifically identified and excluded from this discount in Vendor's original proposal may be excluded from this discount.

Vendor must respond with a percentage from 0%-100%. The percentage discount that you input below will be applied to your Part 1 "Catalog Pricing", as defined in the solicitation, for all TIPS Sales made during the life of the contract. You cannot alter this percentage discount once the solicitation legally closes. You will always be required to discount every TIPS Sale by the percentage included below with the exception of limited goods/services specifically identified and excluded from this discount in Vendor's original proposal. If you add goods or services to your "Catalog Pricing" during the life of the contract, you will be required to sell those new items with this discount applied.

Example: In this example, you enter a 10% minimum percentage discount below. In year-one of your TIPS Contract, your published Part 1 "Catalog Pricing" (website/store/published pricing) for "Material A" is \$100 and for "Material A Maintenance Service" is \$100. In this example, you must sell those items under the Part 1 TIPS Contract at the proposed 10% discounted price of: "Material A" - \$90, "Material A Maintenance Service" - \$90. In year two of your TIPS Contract, you update your Part 1 "Catalog Pricing" with the market. You add "Material B" to your "Catalog Pricing" for \$200 and have increased the price of "Material A" to \$110 and the price of "Material A Maintenance Service" to \$110. In this example, after the Part 1 "Catalog Pricing" update, you must still sell those items under the Part 1 TIPS Contract at the proposed 10% discounted price of: "Material A" - \$99, "Material A Maintenance Service" - \$99, and "Material B" - \$180.00.

With the exception of limited goods/services specifically identified and excluded from this discount in Vendor's original proposal, if you cannot honor the discount on all Part 1 goods and items now included or which may be added in the future with certainty, then you should offer a lesser discount percentage below.

If awarded on Part 1, what is the minimum percentage discount that you can offer TIPS Members off of all Part 1 goods and service pricing (whether offered through Pricing Form 1, Pricing Form 2, or in another accepted format) that you offer?

**3
7** Honoring Vendor's Part 1 Minimum Percentage Discount

Vendor is asked in these Attribute Questions to provide a Minimum Percentage Discount offered to TIPS Members on all Part 1 goods and services sold under the TIPS Contract. If proposing on Part 1, points will be assigned for your response and scoring of your Part 1 proposal will be affected. On your Part 1 evaluation, a "YES" answer will be awarded the maximum 10 points and a "NO" answer will be awarded 0 points. If you are not proposing on Part 1, you must still answer to proceed but this term will not apply to you or affect your scoring unless you decide to propose and are awarded on Part 1.

If awarded on Part 1, does Vendor agree to honor the Minimum Percentage Discount off of their TIPS "Catalog Pricing" that Vendor proposed for all TIPS Sales made for the duration of the TIPS Contract?

3
8

Volume and Additional Discounts

In addition to the Part 1 Minimum Percentage Discount proposed herein, does Vendor ever expect and intend to offer additional, greater, or volume discounts to TIPS Members?

If proposing on Part 1, point(s) may be assigned for your response in the Part 1 category of "Pricing" during scoring and evaluation. If you are not proposing on Part 1, you must respond to proceed but no points will be assigned for your response.

3
9

Part 1 "Catalog Pricing" and Pricing Requirements

This is a requirement of the Part 1 TIPS Contract and is non-negotiable. If you are not proposing on Part 1, you must still agree to proceed but it will not apply to you unless you decide to propose and are awarded on Part 1.

In this solicitation and resulting contract, Part 1 "Catalog Pricing" shall be defined as:

"The then available list of goods or services, in the most current listing regardless of date, that takes the form of a catalog, price list, price schedule, shelf-price or other viewable format that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for review by TIPS or a customer during the purchase process;
- C. to which the Minimum Percentage Discount proposed by the proposing Vendor may be applied.

If awarded on Part 1 of this TIPS Contract, for the duration of the contract, Vendor agrees to provide, upon request, their then current "Catalog Pricing." Or, in limited circumstances where Vendor has proposed the Percentage Mark-Up method of pricing in this proposal, proof of Vendor's "cost" may be accepted by TIPS in place of catalog pricing.

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REQUIRED FOR PART 2 - Vendor's Regular Hours RS Means Coefficient

What is Vendor's Regular Hours RS Means Coefficient? **If you do not intend to propose on Part 2, you may enter a "0" in order to continue.**

The RS Means Price Book is a unit price book adjusted for different geographic areas by using the City Cost Index for each location. You may visit <https://www.rsmeans.com> for more information.

You must review the TIPS Part 2 RS Means JOC Pricing Explanation & Rubric under the "Attachments" tab prior to responding herein.

To propose the RS Means Price Book pricing exactly, Vendor would insert a 1.0 as their Regular Hours RS Means Coefficient below, to propose a 5% discount off of the RS Means Price Book Vendor would insert a .95 as their Regular Hours RS Means Coefficient below. To see the full scoring rubric and use TIPS scoring calculator, please view the TIPS RS Means JOC Pricing Explanation & Rubric under the "Attachments" tab.

Insert Vendor's Regular Hours RS Means Coefficient below. **If you do not intend to propose on Part 2, you may enter a "0" in order to continue.**

4 **REQUIRED FOR PART 2 - Vendor's After-Hours RS Means Coefficient**

1

What is Vendor's After-Hours RS Means Coefficient? **If you do not intend to propose on Part 2, you may enter a "0" in order to continue.**

The RS Means Price Book is a unit price book adjusted for different geographic areas by using the City Cost Index for each location. You may visit <https://www.rsmeans.com> for more information.

You must review the TIPS Part 2 RS Means JOC Pricing Explanation & Rubric under the "Attachments" tab prior to responding herein.

The most common After-Hours RS Means Coefficient is "time-and-a-half" of the standard RS Means Unit Price Book. For example, if Vendor's Regular Hours Coefficient above is .95, Vendor would assert an After-Hours RS Means Coefficient of 1.45 for "time-and-a-half" pricing. To see the full scoring rubric and use TIPS scoring calculator, please view the TIPS RS Means JOC Pricing Explanation & Rubric under the "Attachments" tab.

Insert Vendor's After-Hours RS Means Coefficient below. **If you do not intend to propose on Part 2, you may enter a "0" in order to continue.**

4 **REQUIRED FOR PART 2 - Vendor's Percentage Markup of Items not Pre-Priced within the RS Means Price Book**

2

Here, Vendor must enter a percentage, not a coefficient. **If you do not intend to propose on Part 2, you may enter a "0" in order to continue.**

If Vendor sells items which cannot be found in the RS Means Price Book, at what Percentage Markup does Vendor agree to sell those Non Pre-Priced items? This is a maximum Percentage Markup and Vendor may always offer customers a lesser markup.

Example: In this example, Vendor is selling a project to a TIPS Member school district and some of the contract pricing for special materials cannot be verified because it cannot be found in the RS Means Price book. Vendor may sell those specialty items to the Member this percentage markup from cost. In this example, if one of the specialty items cost Vendor \$100 from the manufacturer and Vendor proposed a Percentage Markup of 30% here, then Vendor could sell the item to the TIPS Customer for \$130.00 or less in this example.

Vendor must provide TIPS with manufacturer documentation reflecting the cost of any non pre-priced item at the time of the TIPS sale so that TIPS can verify that the proposed percentage markup is being honored.

What is Vendor's Percentage Markup of items not Pre-Priced within the RS Means Price Book? **If you do not intend to propose on Part 2, you may enter a "0" in order to continue.**

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REQUIRED FOR PART 2 - TIPS Pricing and Line Item Estimate Pricing Requirements

This is a requirement of the Part 2 TIPS Contract and is non-negotiable. If you are not proposing on Part 2, you must still agree to proceed but it will not apply to you unless you decide to propose and are awarded on Part 2.

Vendor must respond to the required pricing attributes above seeking RS Means coefficients and a percentage markup if seeking to propose on Part 2.

If awarded on Part 2 of this TIPS Contract, for the duration of the contract, Vendor agrees to provide a RS Means line-item estimate to TIPS for each anticipated Part 2 TIPS project or sale. Or, in limited circumstances in contracts where Xactimate pricing is also expressly permitted and Vendor also submits Xactimate pricing under Part 2, Vendor may instead provide an Xactimate line-item estimate to TIPS. However, Vendor agrees that when a TIPS Member Customer seeks a quote for a Part 2 TIPS sale, Vendor will always supply a line-item estimate to TIPS for review and approval.

Yes, Vendor agrees

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4

EXCEPTIONS & DEVIATIONS TO TIPS STANDARD TERMS AND CONDITIONS

Vendor agrees that, if awarded, Vendor's final TIPS Part 1 and/or Part 2 Contract will consist of the provisions set forth in the finalized TIPS Vendor Agreement, Vendor's responses to these attribute questions, and: (1) The corresponding TIPS solicitation document resulting in this Agreement; (2) Any addenda or clarifications issued in relation to the corresponding TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor's entire proposal response to the corresponding TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, accepted pricing, accepted responses to questions, and accepted written clarifications of Vendor's proposal, and; any properly included attachments to the TIPS Contract. In the event of conflict between the terms of the finalized Vendor Agreement and one of the incorporated documents the terms and conditions which are in the best interest of governmental/qualifying non-profit TIPS Members shall control at TIPS sole discretion.

If Vendor responds, "No, Vendor does not agree" to this Attribute, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration. This is the only proper way to submit proposed deviations for TIPS consideration. TIPS reserves the right to accept, decline, or modify Vendor's requested negotiated terms. For this reason, answering "No, Vendor does not agree" may ultimately delay or prevent award.

Does Vendor agree with TIPS standard terms and conditions as presented in the TIPS solicitation document (RFP, RCSP, RFQ, or other) and the TIPS Vendor Agreement document?

Yes, Vendor agrees

4 **TIPS Sales Reporting Requirements**

5 **This is a requirement of the TIPS Contract and is non-negotiable.**

By submitting this proposal, Vendor certifies that Vendor will properly report all TIPS sales. With the exception of TIPS Automated Vendors, who have signed an exclusive agreement with TIPS regarding reporting, all TIPS Sales must be reported to TIPS by either:

(1) Emailing the purchase order or similar purchase document (with Vendor's Name, as known to TIPS, and the TIPS Contract Name and Number included) to TIPS at tipspo@tips-usa.com with "Confirmation Only" in the subject line of the email within three business days of Vendor's acceptance of the order, or;

(2) Within 3 business days of the order being accepted by Vendor, Vendor must login to the TIPS Vendor Portal and successfully self-report all necessary sale information within the Vendor Portal and confirm that it shows up accurately on your current Vendor Portal statement.

No other method of reporting is acceptable unless agreed to by the Parties in writing. Failure to report all sales pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion.

4 **TIPS Administration Fee Requirement and Acknowledgment**

6 **This is a requirement of the TIPS Contract and is non-negotiable.**

The collection of fees by TIPS, a government entity, for performance of these procurement services is required pursuant to Texas Government Code Section 791.011 et. seq. The TIPS Administration Fee is the amount legally owed by Vendor to TIPS for TIPS Sales made by Vendor. The TIPS Administration Fee amount is typically a set percentage of each TIPS Sale legally due to TIPS, but the exact TIPS Administration Fee for this Contract is published in the corresponding RFP or RCSP document. TIPS Administration Fees are due to TIPS immediately upon Vendor's receipt of payment, including partial payment, for a TIPS Sale.

By submitting a proposal, Vendor agrees that it has read, understands, and agrees to the published TIPS Administration Fee amount, calculation, and payment requirements. By submitting a proposal Vendor further confirms that all TIPS Pricing includes the TIPS Administration Fee and Vendor will not show adding the TIPS Administration Fee as a charge or line-item in any TIPS Sale.

4 **TIPS Member Access to Vendor Proposal & Documentation**

7 **This is a requirement of the TIPS Contract and is non-negotiable.**

Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's submission of this proposal constitutes Vendor's express consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, **to TIPS Members**. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation to TIPS Members or by TIPS Members. By submitting this proposal, Vendor certifies the foregoing.

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Non-Collusive Bidding Certificate

This is a requirement of the TIPS Contract and is non-negotiable.

By submission of this proposal, the Vendor certifies that:

- 1) This proposal has been independently arrived at without collusion with any other entity, bidder, or with any competitor;
- 2) This proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other bidder, competitor or potential competitor;
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to modify, submit, or not to submit a bid or proposal; and
- 4) The person signing this bid or proposal certifies that they are duly authorized to execute this proposal/contract on behalf of Vendor and they have fully informed themselves regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the bidder as well as to the person signing in its behalf;

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Antitrust Certification Statements (Tex. Government Code § 2155.005)

This is a requirement of the TIPS Contract and is non-negotiable.

By submission of this bid or proposal, Vendor certifies under penalty of perjury of the laws of the State of Texas that:

- (1) I am duly authorized to execute this proposal/contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Vendor) identified herein;
- (2) In connection with this proposal, neither I nor any representative of Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- (3) In connection with this proposal, neither I nor any representative of the Vendor has violated any federal antitrust law;
- (4) Neither I nor any representative of Vendor has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

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Limitation on Out-of-State Litigation - Texas Business and Commerce Code § 272

This is a requirement of the TIPS Contract and is non-negotiable.

Texas Business and Commerce Code § 272 prohibits a construction contract, or an agreement collateral to or affecting the construction contract, from containing a provision making the contract or agreement, or any conflict arising under the contract or agreement, subject to another state's law, litigation in the courts of another state, or arbitration in another state. If included in Texas construction contracts, such provisions are voidable by a party obligated by the contract or agreement to perform the work.

By submission of this proposal, Vendor acknowledges this law and ***if Vendor enters into a construction contract with a Texas TIPS Member*** under this procurement, Vendor certifies compliance.

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1

Required Confidentiality Claim Form

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS provides the required TIPS Confidentiality Claim Form in the "Attachments" section of this solicitation. Vendor must execute this form by either signing and waiving any confidentiality claim, or designating portions of Vendor's proposal confidential. If Vendor considers any portion of Vendor's proposal to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s) and orders, Vendor must have identified the claimed confidential materials through proper execution of the Confidentiality Claim Form.

If TIPS receives a public information act or similar request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor documents deemed confidential by you in this manner, TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination and opinion.

Notwithstanding any other Vendor designation of Vendor's proposal as confidential or proprietary, Vendor's submission of this proposal constitutes Vendor's agreement that proper execution of the required TIPS Confidentiality Claim Form is the only way to assert any portion of Vendor's proposal as confidential.

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Non-Discrimination Statement and Certification

This is a requirement of the TIPS Contract and is non-negotiable.

In accordance with Federal civil rights law, all U.S. Departments, including but not limited to the USDA, USDE, FEMA, are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by federal funds (not all bases apply to all programs).

Vendor certifies that Vendor will comply with applicable Non-Discrimination and Equal Opportunity provisions set forth in TIPS Member Customers' policies and other regulations at the local, state, and federal levels of governments.

Yes, I certify

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3

Limitation of Vendor Indemnification and Similar Clauses

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS, a department of Region 8 Education Service Center, a political subdivision, and local government entity of the State of Texas, is prohibited from indemnifying third-parties (pursuant to the Article 3, Section 52 of the Texas Constitution) except as otherwise specifically provided for by law or as ordered by a court of competent jurisdiction. Article 3, Section 52 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " and the Texas Attorney General has opined that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Thus, contract clauses which require TIPS to indemnify Vendor, pay liquidated damages, pay attorney's fees, waive Vendor's liability, or waive any applicable statute of limitations must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas."

Does Vendor agree?

Yes, I Agree

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Alternative Dispute Resolution Limitations

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS, a department of Region 8 Education Service Center, a political subdivision, and local government entity of the State of Texas, does not agree to binding arbitration as a remedy to dispute and no such provision shall be permitted in this Agreement with TIPS. Vendor agrees that any claim arising out of or related to this Agreement, except those specifically and expressly waived or negotiated within this Agreement, may be subject to non-binding mediation at the request of either party to be conducted by a mutually agreed upon mediator as prerequisite to the filing of any lawsuit arising out of or related to this Agreement. Mediation shall be held in either Camp or Titus County, Texas. Agreements reached in mediation will be subject to the approval by the Region 8 ESC's Board of Directors, authorized signature of the Parties if approved by the Board of Directors, and, once approved by the Board of Directors and properly signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Does Vendor agree?

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No Waiver of TIPS Immunity

This is a requirement of the TIPS Contract and is non-negotiable.

Vendor agrees that nothing in this Agreement shall be construed as a waiver of sovereign or government immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

Does Vendor agree?

Yes, Vendor agrees

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Payment Terms and Funding Out Clause

This is a requirement of the TIPS Contract and is non-negotiable.

Vendor agrees that TIPS and TIPS Members shall not be liable for interest or late-payment fees on past-due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding-Out Clause: Vendor agrees to abide by the applicable laws and regulations, including but not limited to Texas Local Government Code § 271.903, or any other statutory or regulatory limitation of the jurisdiction of any TIPS Member, which requires that contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

Does Vendor agree?

Yes, Vendor agrees

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7

Certification Regarding Prohibition of Certain Terrorist Organizations (Tex. Gov. Code 2270)

Vendor certifies that Vendor is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

Does Vendor certify?

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Certification Regarding Prohibition of Boycotting Israel (Tex. Gov. Code 2271)

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement or any agreement with a TIPS Member under this procurement has value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Vendor certifies, where applicable, that neither the Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any, boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory but does not include an action made for ordinary business purposes.

When applicable, does Vendor certify?

Yes, Vendor certifies

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Certification Regarding Prohibition of Contracts with Certain Foreign-Owned Companies (Tex. Gov. Code 2274)

Certain public entities are prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant Vendor direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by a customer for product warranty and support purposes.

Vendor certifies that neither it nor its parent company nor any affiliate of Vendor or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country.

For purposes of this certification, "critical infrastructure" means "a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility." Vendor certifies that Vendor will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

When applicable, does Vendor certify?

Yes, Vendor certifies

60 Certification Regarding Prohibition of Discrimination Against Firearm and Ammunition Industries (Tex. Gov. Code 2274)

If (a) Vendor is not a sole proprietorship; (b) Vendor has at least ten (10) full-time employees; and (c) this Agreement or any Supplemental Agreement with certain public entities have a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the Agreement is not excepted under Tex. Gov. Code 2274 and (e) the purchasing public entity has determined that Vendor is not a sole-source provider or the purchasing public entity has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required.

Vendor certifies that Vendor, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association.

For purposes of this Agreement, “discriminate against a firearm entity or firearm trade association” shall mean, with respect to the entity or association, to: “(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.”

“Discrimination against a firearm entity or firearm trade association” does not include: “(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.”

When applicable, does Vendor certify?

Yes, Vendor certifies

61 Certification Regarding Termination of Contract for Non-Compliance (Tex. Gov. Code 552.374)

If Vendor is not a governmental body and (a) this Agreement or any Supplemental Agreement with a public entity has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by certain public entities; or (b) this Agreement or any Supplemental Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by certain public entities in their fiscal year, the following certification shall apply; otherwise, this certification is not required.

As required by Tex. Gov. Code 552.374, the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this solicitation and Agreement and the Vendor agrees that this Agreement and any applicable Supplemental Agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.”

Pursuant to Chapter 552 of the Texas Government Code, Vendor certifies that Vendor shall: (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to TIPS or the purchasing TIPS Member for the duration of the Agreement; (2) promptly provide to TIPS or the purchasing TIPS Member any contracting information related to the Agreement that is in the custody or possession of Vendor on request of TIPS or the purchasing TIPS Member; and (3) on completion of the Agreement, either (a) provide at no cost to TIPS or the purchasing TIPS Member all contracting information related to the Agreement that is in the custody or possession of Vendor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TIPS or the purchasing TIPS Member.

When applicable, does Vendor certify?

Yes, Vendor certifies

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Certification Regarding Prohibition of Boycotting Certain Energy Companies (Tex. Gov. Code 2274)

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement or any Supplemental Agreement with certain public entities has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required.

Vendor certifies that Vendor, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, do not boycott energy companies and will not boycott energy companies during the term of the Agreement or any applicable Supplemental Agreement.

For purposes of this certification the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit.

The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." (See Tex. Gov. Code 809.001).

When applicable, does Vendor certify?

Yes, Vendor certifies

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3

Felony Conviction Notice - Texas Education Code 44.034

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states, "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Subsection (c) states, "This section does not apply to a publicly held corporation."

Vendor certifies one of the following:

- A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable, or;
- B. My firm is not owned nor operated by anyone who has been convicted of a felony, or;
- C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony.

If Vendor responds with Option (C), Vendor is required to provide information in the next attribute.

B. My firm is not owned nor operated by felon.

64 Felony Conviction Notice - Texas Education Code 44.034 - Continued

If Vendor selected Option (C) in the previous attribute, Vendor must provide the following information herein:

- 1. Name of Felon(s)
- 2. The Felon(s) title/role in Vendor's entity, and
- 3. Details of Felon(s) Conviction(s).

No response

65 Conflict of Interest Questionnaire Requirement

Vendor agrees that it has looked up, read, and understood the current version of Texas Local Government Code Chapter 176 which generally requires disclosures of conflicts of interests by Vendor hereunder if Vendor:

- (1) has an employment or other business relationship with a local government officer of our local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of our local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of our local governmental entity.
- (4) Any other financial, commercial, or familial relationship with our local government that may warrant reporting under this statute.

Does Vendor certify that it has NO reportable conflict of interest?

Yes, Vendor certifies - VENDOR HAS NO CONFLICT

66 Conflict of Interest Questionnaire Requirement - Form CIQ - Continued

If you responded "No, Vendor does not certify - VENDOR HAS CONFLICT" to the Conflict of Interest Questionnaire question above, you are required by law to fully execute and upload the form attachment entitled "Conflict of Interest Questionnaire - Form CIQ." If you accurately claimed no conflict above, you may disregard the form attachment entitled "Conflict of Interest Questionnaire - Form CIQ."

Have you uploaded this form if applicable?

Not Applicable

67 Upload of Current W-9 Required

Vendors are required by TIPS to upload a current, accurate W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

You must confirm that you are responding to this solicitation under your legal entity name. Go now to your Supplier Profile in this eBid System and confirm that your profile reflects your "Legal Name" as it is listed on your W9.

68 Regulatory Good Standing Certification

Does Vendor certify that its entity is in good standing will all government entities and agencies, whether local, state, or federal, that regulate any aspect of Vendor's field of work or business operations?

If Vendor selects "No", Vendor must provide explanation on the following attribute question.

Yes, Vendor certifies

6 **Regulatory Good Standing Certification - Explanation - Continued**

9 If Vendor responded to the prior attribute that "No", Vendor is not in good standing, Vendor must provide an explanation of that lack of good standing here for TIPS consideration.

No response

7 **Instructions Only - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**
0 **Instructions for Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

7
1 **Suspension or Debarment Certification**

Read the instructions in the attribute above and then answer the following accurately.

Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Does Vendor certify?

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2 **Vendor Certification of Criminal History - Texas Education Code Chapter 22**

Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district pursuant to this law.

DEFINITIONS

Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students.

Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

Vendor certifies:

NONE (Section A): None of the employees of Vendor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Vendor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided under this procurement.

OR

SOME (Section B): Some or all of the employees of Vendor and any subcontractor are covered employees. If this box is checked, I further certify that: (1) Vendor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history; (2) If Vendor receives information that a covered employee subsequently has a reported criminal history, Vendor will immediately remove the covered employee from contract duties and notify the purchasing entity in writing within 3 business days; (3) Upon request, Vendor will provide the purchasing entity with the name and any other requested information of covered employees so that the purchasing entity may obtain criminal history record information on the covered employees; (4) If the purchasing entity objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Vendor agrees to discontinue using that covered employee to provide services at the purchasing entity.

Which option does Vendor certify?

**7
3** Certification Regarding "Choice of Law" Terms with TIPS Members

Vendor agrees that if any "Choice of Law" provision is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Choice of Law" applicable to the sales agreement/contract between Vendor and TIPS Member shall be the state where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Choice of Law" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

**7
4** Certification Regarding "Venue" Terms with TIPS Members

Vendor agrees that if any "Venue" provision is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Venue" for any litigation or alternative dispute resolution is shall be in the state and county where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Venue" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

**7
5** Certification Regarding "Automatic Renewal" Terms with TIPS Members

Vendor agrees that no TIPS Sale may incorporate an "Automatic Renewal" clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated into a TIPS Sale Supplemental Agreement shall only be valid and enforceable when Vendor received written confirmation of acceptance of the renewal term from the TIPS Member for the specific renewal term. The purpose of this clause is to avoid a TIPS Member inadvertently renewing a Supplemental Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. Any TIPS Sale Supplemental Agreement containing an "Automatic Renewal" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

**7
6 Certification Regarding "Indemnity" Terms with TIPS Members**

Texas and other jurisdictions restrict the ability of governmental entities to indemnify others. Vendor agrees that if any "Indemnity" provision which requires the TIPS Member to indemnify Vendor is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must either be stricken or qualified by including that such indemnity is only permitted, "to the extent permitted by the laws and constitution of [TIPS Member's State]" unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing an "Indemnity" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

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7 Certification Regarding "Arbitration" Terms with TIPS Members**

Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause may **not** require that the arbitration is mandatory or binding. Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause provides for only voluntary and non-binding arbitration unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Arbitration" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

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8 2 CFR PART 200 AND FEDERAL CONTRACT PROVISIONS EXPLANATION**

TIPS and TIPS Members will sometimes seek to make purchases with federal funds. In accordance with 2 C.F.R. Part 200 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (sometimes referred to as "EDGAR"), Vendor's response to the following questions labeled "2 CFR Part 200 or Federal Provision" will indicate Vendor's willingness and ability to comply with certain requirements which may be applicable to TIPS purchases paid for with federal funds, if accepted by Vendor.

Your responses to the following questions labeled "2 CFR Part 200 or Federal Provision" will dictate whether TIPS can list this awarded contract as viable to be considered for a federal fund purchase. **Failure to certify all requirements labeled "2 CFR Part 200 or Federal Provision" will mean that your contract is listed as not viable for the receipt of federal funds. However, it will not prevent award.**

If you do enter into a TIPS Sale when you are accepting federal funds, the contract between you and the TIPS Member will likely require these same certifications.

7 2 CFR Part 200 or Federal Provision - Vendor Willingness to Accept Federal Funds

This certification is not required by federal law. However, TIPS Members are public entities and qualifying non-profits which often receive federal funding and grants (ESSER, CARES Act, EDGAR, etc.) **Accepting such funds often requires additional required certifications and responsibilities for Vendor.** The following attribute questions include these required certifications. Your response to this questions, the following certifications, and other factors will determine whether your contract award will be deemed as eligible for federal fund expenditures by TIPS Members.

If awarded, is Vendor willing to accept payment for goods and services offered under this contract paid for by a TIPS Member with federal funds?

8 2 CFR Part 200 or Federal Provision - Contracts

Contracts for more than the simplified acquisition threshold currently set at \$250,000 (2 CFR § 200.320), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserve all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

8 2 CFR Part 200 or Federal Provision - Termination

Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserve the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserve the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The Vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

8 2 2 CFR Part 200 or Federal Provision - Clean Air Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members require that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

Yes, Vendor agrees

8 3 2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members require the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

Does Vendor agree?

Yes, Vendor agrees

8 4 2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment - Continued

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does Vendor certify that it has NOT lobbied as described herein?

Yes, Vendor certifies - NO Reportable Lobbying

8 5 2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment - Continued

If you answered "No, Vendor does not certify - Lobbying to Report" to the above attribute question, you must download, read, execute, and upload the attachment entitled "Disclosure of Lobbying Activities - Standard Form - LLL", as instructed, to report the lobbying activities you performed or paid others to perform.

8 6 2 CFR Part 200 or Federal Provision - Federal Rule

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify compliance?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with these provisions?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Rights to Inventions

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor certify?

Yes, Vendor certifies

8 2 CFR Part 200 or Federal Provision - Domestic Preferences for Procurements and Compliance with
9 Buy America Provisions

As appropriate and to the extent consistent with law, TIPS Member Customers, to the greatest extent practicable under a Federal award, may provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. For purposes of 2 CFR Part 200.322, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition. For purposes of 2 CFR Part 200.322,

"Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

"Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does Vendor Certify?

9 2 CFR Part 200 or Federal Provision - Ban on Foreign Telecommunications
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ESC 8 and TIPS Members are prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that use "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. "Covered telecommunications" equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use "covered telecommunications", as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor certify?

9 2 CFR Part 200 or Federal Provision - Contract Cost & Price

1 For contracts more than the simplified acquisition threshold currently set at \$250,000, a TIPS Member may, in very rare circumstances, be required to negotiate profit as a separate element of the price pursuant to 2 C.F.R. 200.324(b). Under those circumstances, Vendor agrees to provide information and negotiate with the TIPS Member regarding profit as a separate element of the price. However, Vendor certifies that the total price charged by the Vendor shall not exceed the Vendor's TIPS pricing and pricing terms proposed.

Does Vendor certify?

Yes, Vendor certifies

9 2 CFR Part 200 or Federal Provision - Equal Employment Opportunity

2 Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members on any federally assisted construction contract, the equal

opportunity clause is incorporated by reference here.

Does Vendor Certify?

Yes, Vendor certifies

9 2 CFR Part 200 or Federal Provision - Davis Bacon Act Compliance

3 Texas Statute requires compliance with Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to state and federal requirements, Vendor certifies that it will be in compliance with all applicable Davis-Bacon Act provisions if/when applicable.

Does Vendor certify?

Yes, Vendor certifies

9 4 2 CFR Part 200 or Federal Provision - Contract Work Hours and Safety Standards

Where applicable, all contracts awarded by ESC 8 and TIPS Members in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award for all contracts resulting from this procurement process, Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does Vendor certify?

Yes, Vendor certifies

9 5 2 CFR Part 200 or Federal Provision - FEMA Fund Certification & Certification of Access to Records

If and when Vendor accepts a TIPS purchase paid for in full or part with FEMA funds, Vendor certifies that:

(1) Vendor agrees to provide the TIPS Member, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to and rights to reproduce any books, documents, papers, and records of the Contractor which are directly pertinent to this contract, or any contract resulting from this procurement, for the purposes of making audits, examinations, excerpts, and transcriptions. This right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents. Vendor agrees to provide the FEMA Administrator or an authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. Vendor acknowledges and agrees that no language in this contract or the contract with the TIPS Member is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) The Vendor shall not use the Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(3) The Vendor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(4) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

(5) The Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Vendor's actions pertaining to this contract.

Does Vendor certify?

Yes, Vendor certifies

9 6 2 CFR Part 200 or Federal Provision - Certification of Compliance with the Energy Policy and Conservation Act

When appropriate and to the extent consistent with the law, Vendor certifies that it will comply with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq; 49 C.F.R. Part 18) and any state mandatory standards and policies relating to energy efficiency which are contained in applicable state energy conservation plans issued in compliance with the Act.

Does Vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Certification of Compliance with Never Contract with the Enemy

Where applicable, all contracts awarded by ESC 8 and TIPS Members in excess of \$50,000.00, within the period of performance, and which are performed outside of the United States, including U.S. territories, are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. Per 2 CFR part 183, in the situation specified, ESC 8 and TIPS Members shall terminate any contract or agreement resulting from this procurement which violates the Never Contract with the Enemy regulation in 2 CFR part 183, including if Vendor is actively opposing the United States or coalition forces involved in a contingency operation in which members of the the Armed Forces are actively engaged in hostilities. Vendor certifies that it is neither an excluded entity under the System for Award Management (SAM) nor Federal Awardee Performance and Integrity Information System (FAPIS) for any contract terminated due to Never Contract with the Enemy as a Termination for Material Failure to Comply.

Does Vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Certification of Compliance with EPA Regulations

For contracts resulting from this procurement, in excess of \$100,000.00 and paid for with federal funds, Vendor certifies that Vendor will comply with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does Vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Record Retention Requirements

For contracts resulting from this procurement, paid for by ESC 8 or TIPS Members with federal funds, Vendor certifies that Vendor will comply with the record retention requirements detailed in 2 CFR § 200.334. Vendor certifies that Vendor will retain all records as required by 2 CFR § 200.334 for a period of three years after final expenditure or financial reports, as applicable, and all other pending matters are closed.

Does Vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Subcontracting and Affirmative Steps for Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

If you respond "Yes", you must respond to the following attribute question accurately. If you respond "No", you may skip the following attribute question.

NO

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2 CFR Part 200 or Federal Provision - If "Yes" Response to Above Attribute - Continued - Subcontracting and Affirmative Steps for Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Only respond to this question if you responded "Yes" to the attribute question directly above. Skip this question if you responded "No" to the attribute question directly above.

Does Vendor certify that it will follow the following affirmative steps? Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

Does Vendor certify?

1
0
2

ACKNOWLEDGMENT & BINDING CORPORATE AUTHORITY

By submitting this proposal, the individual(s) submitting on behalf of the Vendor certify that they are authorized by Vendor to complete and submit this proposal on behalf of Vendor and that this proposal was duly submitted on behalf of Vendor by authority of its governing body, if any, and within the scope of its corporate powers.

Vendor further certifies that it has read, examined, and understands all portions of this solicitation including but not limited to all attribute questions, attachments, solicitation documents, bid notes, and the Vendor Agreement(s). Vendor certifies that, if necessary, Vendor has consulted with counsel in understanding all portions of this solicitation.

TIPS 230801 Auditorium, Stadium, Field Seating, Bleachers, and Installation	Interkal
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TIPS REFERENCE FORM

All requested information must be typed and uploaded in Excel format. TIPS will reach out via the emails provided so please ensure that they are typed and accurate. Do not handwrite or upload in any format other than Excel. Emails provided must be current and active. Do not include TIPS/Region 8 employees as a reference. The entities that you provide must be paying customers, not

You must provide below at least five (5) references from five different entity customers, preferably government or non-profit entities, who have purchased goods or services from your vendor entity within the last three years.

Customer Entity Name	Customer Contact	Valid Contact Email	Valid Contact Phone
Mason High School	Conner Thomas	thomasc@masonk12.net	517-676-9055
Berrion Springs Middle School	Ron Bartz	rbartz@homeoftheshamrocks.org	269-930-0200
Traverse City Public Schools	Cindy Farah	farahcy@tcaps.net	231-933-1728
Lakeview Community Schools	Dan Kain	kaind@lakeviewschools.net	616-835-6133
Hancock Public Schools	Chris Salani	csalani@hancock.k12.mi.us	906-483-2540

TIPS CONTRACT _____

REQUIRED CONFIDENTIALITY CLAIM FORM

(VENDOR MUST COMPLETE THE FOLLOWING VENDOR INFORMATION)

Vendor Entity Name: _____

Vendor Authorized Signatory Name: _____

Vendor Authorized Signatory Title: _____

Vendor Authorized Signatory Email: _____

Vendor Address: _____

City: _____ State: _____ Zip Code: _____

Vendor agrees that it is voluntarily providing its data (including but not limited to: Vendor information, Vendor documentation, Vendor’s proposal, Vendor pricing submitted or provided to TIPS, TIPS contract documents, TIPS correspondence, Vendor logos and images, Vendor’s contact information, Vendor’s brochures and commercial information, Vendor’s financial information, Vendor’s certifications, and any other Vendor information or documentation submitted to TIPS by Vendor and its agents) (Hereinafter, “Vendor Data”) to TIPS. Vendor understands and agrees that TIPS is a government entity subject to public information laws including but not limited to Texas Government Code (TGC) Chapter 552. Vendor agrees that regardless of confidentiality designations herein, Vendor’s submission of a proposal constitutes Vendor’s consent to the disclosure and release of Vendor’s Data and comprehensive proposal, including any information deemed confidential or proprietary herein, to and by TIPS Members.

Notwithstanding the foregoing permissible release to TIPS Members, if Vendor considers any portion of Vendor’s proposal to be otherwise confidential and not subject to public disclosure pursuant to public information laws, including but not limited to TGC Chapter 552, Vendor must properly execute **Option 1 only** below, attach to this PDF all documents and information that Vendor deems confidential, and upload the consolidated documentation. Regardless of the Option selected below, this form must be completed and uploaded to the “Response Attachments” section of the eBid System entitled “Required Confidentiality Claim Form.” Execution and submission of this form is the sole indicator of whether Vendor considers any Vendor Data confidential in the event TIPS receives a request, a Public Information Request, or subpoena. If TIPS receives a request, any responsive documentation not deemed confidential by you through proper execution of Option 1 of this form will be automatically released. For information deemed confidential by you through proper execution of Option 1 of this form, TIPS will follow procedures of controlling statute(s) regarding withholding that documentation and shall not be liable for any release of information required by law, including Attorney General opinion or court order.

(VENDOR MUST COMPLETE ONE OF THE TWO OPTIONS AND UPLOAD IN THE EBID SYSTEM)

OPTION 1 – DESIGNATING CONFIDENTIAL MATERIALS – YES, VENDOR HAS ATTACHED CONFIDENTIAL MATERIALS

(Confirm each bullet point and sign below)

- Vendor claims some Vendor Data confidential to the extent permitted by TGC Chapter 552 and other applicable law.
- Vendor attached to this PDF all potentially confidential Vendor Data and listed the number of attached pages below.
- Vendor’s authorized signatory has signed below and shall upload this document in the proper location in the eBid System.
- Vendor agrees that TIPS shall not be liable for any release of confidential information required by law.

Number of pages attached deemed confidential: _____

Authorized Signature: _____

OPTION 2 – WAIVER OF CONFIDENTIALITY – NO, VENDOR HAS NOT ATTACHED CONFIDENTIAL MATERIALS

(Confirm each bullet point and sign below)

By signing for Option 2 below, Vendor expressly waives any confidentiality claim for all Vendor Data submitted in relation to this proposal and resulting contract. Vendor confirms that TIPS may freely release Vendor Data submitted in relation to this proposal or resulting contract to any requestor. Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of Vendor Data by TIPS or TIPS Members.

- Vendor’s authorized signatory has signed below and shall upload this document in the proper location in the eBid System.
- Vendor agrees that TIPS shall not be liable for any release of confidential information required by law.

Authorized Signature: Matt J. Lalonde



Kevin J. Van Otterloo
Underwriting Director
Grand Rapids, MI
Telephone 616-285-2682
800-432-9534 x2682
Email
Kevin.VanOtterloo@cna.com

September 6, 2023

To Whom It May Concern:

Re: Interkal, LLC
5981 East Cork Street
Kalamazoo, MI 49003-2107

We are writing to you at the request of Interkal, LLC.

We have been providing surety bonds for Interkal, LLC since 1989. We have approved bonds for them covering jobs up to \$3,300,000 and **bonded** (open performance/payment bonds) aggregate programs of \$15,000,000 and would favorably consider jobs above this amount.

We continue to be confident in Interkal, LLC's ability to perform and we recommend them for your favorable consideration.

Western Surety Company (NAIC# 13188) is an underwriting company of CNA Surety and is an approved surety on the Department of Treasury's Listing of Approved Sureties and currently has a US Treasury Limit of \$151,103,000. Western Surety Company maintains an A (Excellent) AM Best Rating and a financial size of XIV.

This letter is not to be construed as an agreement to provide surety bonds for any particular project, but is offered as an indication of our past experience and confidence in this firm. Any specific request for bonds will be underwritten on its own merits.

Sincerely,

Western Surety Company

Kevin Van Otterloo

VENDOR SUPPLEMENTAL INFORMATION

TIPS permits Vendors to submit supplemental documentation and information (“Vendor Supplemental Information”) with their proposals to display to TIPS Member Customers their qualifications, offerings, and special terms. The following documents are for marketing and informational purposes only. They are not terms of Vendor’s TIPS Contract. If the Vendor Supplemental Information herein contains any warranties, terms, or conditions, the TIPS Member Customer may review and determine whether or not those are applicable and acceptable for any TIPS purchase before proceeding. If the Vendor Supplemental Information contains any licenses or certificates, TIPS encourages the TIPS Member Customer to ensure current accuracy at the time of a TIPS purchase.



Interkal

Spectator Seating World Wide
www.interkal.com

P.O. Box 2107
5981 East Cork St.
Kalamazoo, MI 49003-2107
Tel: (269) 349-1521
Fax: (269) 349-6530

LIMITED WARRANTY INTERKAL

Limited Warranty. Subject to all of the terms and conditions set forth below, Interkal provides the following limited warranty ("Limited Warranty") to the end user of the Interkal Products ("Owner"). The Limited Warranty period begins on the Owner's sign off date (set forth below) and continues for the applicable time period described below.

SUBSTANTIAL COMPLETION DATE: _____
Facility Name: _____
TGS #: _____
End user/Owner: _____

In the event a defect in the material or workmanship (or component part thereof) causes failure of the Interkal Product within the applicable time period, and provided written notice of the defect is given to Interkal at the address set forth below prior to the expiration of the applicable time period, Interkal, in its sole discretion, will either repair or replace the defective product (or defective component part thereof) with a comparable product (or component part thereof). Interkal has no responsibility to match the color, grain, fabric or texture of any repaired or replaced product, except to within commercially reasonable standards, as determined by Interkal. The Limited Warranty includes labor, materials, and freight for the first five years of the warranty time period and materials and freight only thereafter (structural components). All other costs are excluded. The fulfillment of the Limited Warranty (including investigation, timing of response, labor, and shipment) is under the exclusive control and discretion of Interkal.

THIS LIMITED WARRANTY AND THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE TO THE MAXIMUM EXTENT ALLOWED BY LAW AND ARE IN LIEU OF ANY AND ALL OTHER REMEDIES, WARRANTIES, OR REPRESENTATIONS OTHER THAN THOSE EXPRESSLY STATED HEREIN, WHETHER EXPRESSED OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).

Time Periods.

Understructure-Structural components	10 years
Above deck components, including all seating options	5 years
Power/electrical components	5 years

Exclusions. This Limited Warranty shall not apply to consumable products (e.g., light bulbs, ballasts, etc.) or any product that has been subject to normal wear and tear, abuse, accident, natural calamity, misuse or improper maintenance, including the failure to follow all instructions (including operating or maintenance recommendations), or for any alteration, modification, repair or maintenance performed by anyone other than Interkal or its representatives. Interkal gives no warranty with respect to any products manufactured by others or any installation, maintenance or repairs performed by anyone other than Interkal, and the sole warranty therefore shall be from the manufacturer of such products or the provider of such services.

Limitation on Liability. The liability of Interkal on any claim of any kind, including for negligence, strict or product liability, or breach of contract or warranty, for any loss or damage arising out of or in connection with any products, or the performance or breach of any contract with respect to the products, shall in no case exceed the amount paid to Interkal for the products, and shall not include any liability for any consequential, incidental or special damages, loss of property, production or profits, or for installation or other costs.

Notice Address. Interkal, Attn: Service and Installation Manager,

Miscellaneous. This Limited Warranty shall be governed by the laws of the State of Michigan, without regard to conflicts of law principles and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods. This Limited Warranty constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. This Limited Warranty may only be amended, modified, or supplemented by an agreement in writing signed by an authorized representative of Interkal.

INTERKAL By:

Jeff Whisler
Service / Installation Mgr.

TOADVINE

SEATING • ATHLETIC EQUIPMENT • VIDEO SCOREBOARDS

P.O. Box 190 • Fishersville, KY 40023 • Phone: 502-241-6010 • 1-877-211-6925 • Fax: 502-241-2288 • www.toadvine.com

PROPOSAL

TO: Bradley Academy
PROJECT: New Bleachers
LOCATION: Murfreesboro, TN 37129

DATE: 1/23/2024

T.I.P.S CONTRACT #: 23080101

Pricing Includes Material, Freight, and Installation \$65,404.00

MSRP: \$66,880.00

Pricing Includes:

1. (2) Banks 80'0" with 3 Rows
 - 10" Excel Seat Module (Color TBD)
 - 10 1/4" Rise / 24" Span
 - Manual Operation
 - Intermediate Steps & Foot Level Aisle w/Rail
 - Self-Storing End Rails
 - ADA Recoverable Notchouts Without Rails
2. Remove Existing Bleachers
 - Dumpster Included
 - (2) Banks, 82' Each, Wall Attached

NOTE: Bleachers must ship no later than May 2024

NOTE: Pricing assumes removal is done during the same mobilization as the installation.

NOTE: Our installation team will need uninterrupted access to the Gym for the duration of removal and installation.

Exclusions and Clarifications:

1. Architectural Fees
2. Floor protection beyond standard tarp
3. Any Liquidated, Consequential and/or Actual Damages clauses.
4. All electrical work – By Others
5. Patching and Painting
6. Any equipment not specified in pricing listed above
7. Note: Clean-up to be limited to removing all debris, dirt and rubbish accumulated as a result of our installation to a dumpster, leaving the premises broom clean and orderly.

TERMS: Net 30 Days

RESPECTFULLY,
Toadvine Enterprises

By *Sam Melchior*

ACCEPTED: _____

(name)

(date)

Note: This quotation is offered for acceptance within 30 days and is subject to revision beyond that time. Pricing assumes delivery no later than **September, 2024**. Delivery beyond this date shall require a Change Order for any additional escalation fees that are incurred to Toadvine Enterprises by the manufacturer.



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SEATING • ATHLETIC EQUIPMENT • VIDEO SCOREBOARDS

P.O. Box 190 • Fishersville, KY 40023 • Phone: 502-241-6010 • 1-877-211-6925 • Fax: 502-241-2288 • www.toadvine.com

PROPOSAL

TO: Mitchel-Neilson ES
PROJECT: Mitchel-Neilson ES New Bleachers
LOCATION: Murfreesboro, TN 37129

DATE: 1/4/2024

T.I.P.S CONTRACT #: 23080101

Pricing Includes Material, Freight, and Installation \$65,746.00
MSRP: \$66,671.00

Pricing Includes:

1. (2) Banks 79'9" with 3 Rows
 - 10" Excel Seat Module (Color TBD)
 - 10 1/4" Rise / 24" Span
 - Manual Operation
 - Intermediate Steps & Foot Level Aisle w/Rail
 - Self-Storing End Rails
 - ADA Recoverable Notchouts Without Rails
2. Remove Existing Bleachers
 - Dumpster Included
 - (2) Banks, 80' Each, Wall Attached

NOTE: Bleachers must ship no later than May 2024

NOTE: Pricing assumes removal is done during the same mobilization as the installation.

NOTE: Our installation team will need uninterrupted access to the Gym for the duration of removal and installation.

Exclusions and Clarifications:

1. Architectural Fees
2. Floor protection beyond standard tarp
3. Any Liquidated, Consequential and/or Actual Damages clauses.
4. All electrical work – By Others
5. Patching and Painting
6. Any equipment not specified in pricing listed above
7. Note: Clean-up to be limited to removing all debris, dirt and rubbish accumulated as a result of our installation to a dumpster, leaving the premises broom clean and orderly.

TERMS: Net 30 Days

RESPECTFULLY,
Toadvine Enterprises

By *Sam Melchior*

ACCEPTED: _____

(name)

(date)

Note: This quotation is offered for acceptance within 30 days and is subject to revision beyond that time. Pricing assumes delivery no later than **September, 2024**. Delivery beyond this date shall require a Change Order for any additional escalation fees that are incurred to Toadvine Enterprises by the manufacturer.



Solutions for Seating, Athletic Equipment, and Scoring/Video Since 1980

toadvine.com



**Agreement for
Purchase and Installation of Bleachers at Bradley Academy, Mitchell-Neilson
Elementary, Reeves-Rogers Elementary, and Discovery School**

This Agreement is entered into and effective as of _____ (the “Effective Date”) by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Toadvine Enterprises, Inc.**, a corporation of the State of Kentucky and authorized reseller of Interkal products (“Contractor”).

This Agreement consists of the following documents:

- This document
- TIPS (The Interlocal Purchasing System) Contract 23080101 with Interkal for Auditorium, Stadium, Field Seating, Bleacher, and Installation Services (the “TIPS Contract”);
- Contractor’s Proposal, dated January 23, 2024, for Bradley Academy, Contractor’s Proposal dated January 4, 2024 for Mitchell-Neilson Elementary School, and Contractor’s Proposal dated January 23, 2024 for Discovery School and Reeves-Rogers (“Contractor’s Proposals”);
- Any properly executed amendments to this Agreement.

In the event of conflicting provisions, all documents will be construed according to the following priorities:

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the TIPS Contract
- Lastly, Contractor’s Proposals.

1. Duties and Responsibilities of Contractor.

a. Scope of Work. Contractor is engaged by the City to provide the goods and to perform the installation services as described in Contractor’s Proposals for the installation of bleachers at the following schools:

- Bradley Academy-511 Dr. Martin Luther King Boulevard, Murfreesboro, TN
- Mitchell-Neilson Elementary School- 711 W Clark Boulevard, Murfreesboro, TN
- Discovery School- 1165 Middle Tennessee Boulevard, Murfreesboro, TN
- Reeves-Rogers Elementary School- 1807 Greenland Drive, Murfreesboro, TN

b. Supervision and Superintendence of Work.

1. Contractor will supervise and direct the work efficiently and with Contractor’s best skill and attention. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor will be responsible to see that the finished work complies accurately with the Contract documents.
2. Contractor will keep on the work site at all times during work progress a competent resident superintendent. The superintendent will be Contractor’s representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

c. Labor, Materials, and Equipment.

1. Contractor will provide competent, suitably qualified personnel to perform the work as set forth in Contractor’s Quotes. The Contractor will at all times maintain good discipline and order at the site.

2. Contractor will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, and all other incidentals necessary for the execution, testing, initial operation, and completion of the work.
 3. All materials will be new, except as otherwise provided in the Contract documents. If required by the City, Contractor will furnish satisfactory evidence as to the kind and quality of materials and equipment.
 4. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract documents.
- d. Warranty and Guarantee. The Contractor warrants to the City that:
1. Unless otherwise provided for, all materials, machinery, and equipment used on the work shall be new, of the best quality in their kind and grade, and of the most efficient and effective design and type available for the purposes for which they are intended;
 2. All materials, machinery, and equipment conform in every respect with the specifications, drawings, approved samples, and other requirements of the Contract documents;
 3. Only such materials, machinery, and equipment shall be used on the work as have been produced or manufactured in accordance with the established and generally accepted standards for goods and workmanship of the type covered by the specifications and are of such a design and construction as to perform properly the function or work for which they are intended and to afford the maximum ease in upkeep and repair;
 4. The finish of the exterior surface of the materials, machinery and equipment used on the work shall be in accordance with the specifications, or if there are no applicable specifications, such finish shall be consistent with commercially accepted practices for the services to be rendered by the respective materials, machinery, and equipment; and,
 5. The Contractor agrees that all warranties in the Contract documents shall survive acceptance of, delivery of, and payment for, the goods, whether any defects shall be latent or patent, and agrees to indemnify and hold the City harmless from any loss, damage, or other expense, including attorneys' fees, that the City may suffer as a result of the failure of the materials, machinery, and equipment or workmanship to be as warranted. Each warranty with respect to any items other than machinery and equipment, shall expire sixty (60) months from the date of receipt by the City of such items and, with respect to machinery and equipment, twenty-four (24) months after the date of initial operation of such machinery and equipment. The Contractor agrees to correct without expense to, and to the satisfaction of, the City, any defects that may develop in material, workmanship, and design during the period of such warranty.

The warranties set forth in this subsection are cumulative and shall not exclude or affect the operation of any other warranty or guaranty provided by law or by the Contract documents.

e. Subcontractors.

1. Contractor will not employ any subcontractor to perform any of the work required under the Contract documents without first obtaining the written approval of the City's designated representative to employ the subcontractor.
2. Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract documents shall create

any contractual relationships between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor, except as may otherwise be required by law. The City may furnish to any subcontractor, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.

3. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Contract documents for the benefit of the City.
 4. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate written agreement between Contractor and the subcontractor.
- f. Permits. Contractor will secure and pay for all construction permits and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the work, which are applicable at the time of Contractor's bid. Contractor will also pay all public utility charges.
- g. Use of Premises.
1. Contractor will confine Contractor's equipment, the storage of materials and equipment and the operations of Contractor's workers to areas permitted by law, ordinances, permits, or the requirements of the Contract documents, and shall not unreasonably encumber the premises with materials or equipment.
 2. Contractor will not load nor permit any part of the structure to be loaded with weights that will endanger the structure, nor will Contractor subject any part of the work to stresses or pressures that will endanger it.
- h. Safety and Protection.
1. Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:
 - a. All employees on the work and other persons who may be affected thereby,
 - b. All the work and all materials or equipment to be incorporated there, whether in storage on or off the site, and
 - c. Other property at the site or adjacent property, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Contractor will comply with all applicable laws, ordinances, rules, regulations and order of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. Contractor will notify the City of adjacent utilities when prosecution of the work may affect them. All damage, injury, or loss to any property referred to in subparagraph (2) or (3) of this section caused directly or indirectly, in whole or in part, by Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, will be remedied by Contractor; except damage or loss attributable to the fault of drawings or specifications or to the acts or omissions of the City or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor.

2. Contractor will designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the City.
 - i. Emergencies. In emergencies affecting the safety of persons or the work or property at the site or adjacent property, Contractor, without special instruction or authorization from the City, is obligated to act, at Contractor's discretion, to prevent threatened damage, injury or loss.
 - j. Background Checks. Contractor shall comply with T.C.A. § 49-5-413, which requires all contractors to facilitate a criminal history records check conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation for each employee prior to permitting the employee to have contact with students or enter school grounds when students are present.
 - k. Cleaning Up. Contractor will keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the work, and at the completion of the work Contractor will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the City. Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract documents.
 - l. Access to the Work. Representatives of the City will at all times have access to the work. Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing by others.
 - m. Contractor's Continuing Obligation. Contractor's obligation to perform the work and complete the Project in accordance with the Contract documents shall be absolute. Neither any payment by the City to Contractor under the Contract documents, nor any use or occupancy of the Project or any part by the City, nor any act of acceptance by the City nor any failure to do so, nor any correction of defective work by the City shall constitute acceptance of work not in accordance with the Contract documents.
2. **Term.** The term of this Agreement shall be One Hundred Twenty (120) days from the Notice to Proceed. Contractor's services may be terminated in whole or in part:
 - a. Upon 30-day prior notice, for the convenience of the City.
 - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
 - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
 - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
 - e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.
3. **Price; Compensation; Method of Payment.** Contractor will be compensated upon the delivery and acceptance of the goods and services specified in Contractor's Proposals which reflects a cost of \$65,404.00 for Bradley Academy, a cost of \$65,746.00 for Mitchell-Neilson

Elementary, a cost of \$96,037.00 for Discovery School and a cost of \$89,607.00 for Reeves Rogers Elementary, which reflects a **total purchase price of \$316,794.00**. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after performance of the portion of the services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. The final payment shall be made only after Contractor has completely performed its duties under this Contract and the work has been accepted by the City and all work has been approved by an inspector from the Murfreesboro Building and Codes Department or City designee, if applicable. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete. All invoices should be sent to: accountspayable@murfreesborotn.gov.

4. Insurance. Contractor must maintain commercial general liability insurance for bodily injury and property damage, automobile liability insurance, and workers' compensation insurance as required by the State of Tennessee and as specified in Exhibit A hereto. Contractor must name the City and the City of Murfreesboro as an additional insured Contractor must notify the City within five days if the insurance policy is renewed, cancelled, or altered in any manner and provide written documentation of such alteration.

5. Indemnification.

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.

6. Notices.

Notice of assignment of any rights to money due to Contractor under this Agreement must be mailed first class mail or hand delivered to the following:

If to the City of Murfreesboro:	If to Contractor:
City Manager	Sam Melchior
City of Murfreesboro	Toadvine Enterprises, Inc.
111 West Vine Street	P.O. Box 190
Murfreesboro, TN 37130	Fisherville, KY 40023
	sam@toadvine.com

7. Maintenance of Records. Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.

8. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
9. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
10. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
11. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
12. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
13. **Gratuities and Kickbacks.** It is a breach of ethical standards for any 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, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. 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 a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City.
14. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and

obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.

15. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
16. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
17. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
18. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
19. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
20. **Tobacco Free Policy.** Pursuant to Murfreesboro City Board of Education Policy 1.803, the use of tobacco and tobacco products, including smokeless tobacco, are prohibited on all property of Murfreesboro City Schools.
21. **Iran Divestment Act of Tennessee.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that Contractor is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
22. **Non-Boycott of Israel.** By submission of the Contractor's Bid, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that each supplier is not boycotting Israel pursuant to Tenn. Code Ann. § 12-4-119 and will not boycott Israel during the term of contract. This applies to contracts of \$250,000 or more and to contractors with ten (10) or more employees.
23. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties enter into this agreement as of the Effective Date first listed above.

CITY OF MURFREESBORO, TENNESSEE TOADVINE ENTERPRISES, INC.

By: _____
Shane McFarland, Mayor

By: _____
Chris Tolley, Chief Operating Officer

Approved as to form:

Adam F. Tucker, City Attorney

Exhibit A

Insurance Requirements

Contractor must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Contractor, furnish and maintain, and cause its Subcontractors to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

Contractor must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers' compensation and employer's liability insurance, providing the following coverages, limits and endorsements:

1. Commercial General Liability Insurance.

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than \$1,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$1,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
 - a. Include the per project aggregate endorsement;
 - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
 - c. Stipulate that the insurance afforded by the policies furnished by Contractor will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Contractor and by its Subcontractors;
 - d. Includes a severability of interest clause; and
 - e. Waive all rights of recovery against the Additional Insureds.

- 2. Workers' Compensation Insurance.** Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. **Auto Liability Insurance**

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.
- 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
- 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. **Term of Coverage**

- 4.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").
- 4.2 If at any time during the Completed Operations Term Contractor cannot obtain equivalent coverage by replacement or renewal, Contractor must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.
- 4.3 Contractor will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 4.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

5. **Subcontractor and Lower-Tier Entities Insurance Requirements**

- 5.1 Contractor must require all of Contractor's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
 - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Contractor under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
 - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
 - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Contractor must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Contractor and Subcontractor.

- d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

6. **Other Policy Provisions.** Each policy to be furnished by Contractor and each Subcontractor must:

- 6.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 6.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 6.3 Include the Project per aggregate endorsement;
- 6.4 Waive all rights of subrogation against the Owner;
- 6.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and
- 6.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

7. **Certificates and Endorsements**

- 7.1 Within 10 days after the execution of this Agreement, Contractor must provide the Owner with certificates and endorsements;
- 7.2 Upon the Owner request, Contractor must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Contractor, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Contractor, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.
- 7.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Contractor must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

8. **Reduction in Coverage.** Contractor must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Contractor of same. The Owner has the right to require Contractor or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Contractor or the applicable Subcontractor.

9. Suppliers and Materialmen Coverages

- 9.1 Contractor will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 9.2 With respect to any equipment, machinery or other goods for which the Owner or Contractor has paid a deposit, Contractor will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Contractor as loss payee as their interests appear.

10. Condition Precedent to Starting Work

- 10.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Contractor and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with the original of each bond required under this Agreement. Contractor and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;
- 10.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Contractor or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Contractor or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Contractor and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

- 11. **Additional Proofs of Insurance.** Contractor must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.
- 12. **Indemnity.** The fact that Contractor and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Contractor and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.
- 13. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

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PROPOSAL

TO: Murfreesboro City Schools
PROJECT: Indoor Bleachers
LOCATION: Murfreesboro, TN

BID DATE: 12/20/2023
DATE: 1/23/2024
ADDENDUMS: N/A

T.I.P.S CONTRACT #: 23080101

QUARTER 3 PRICING

TIPS PRICING/ Material, freight, and installation.....\$185,643.00

1. DISCOVERY SCHOOL: \$96,037.00

- (2) Banks of 77' Long x 5 Rows which include all the below:
 - i. 10" Excel Plastic Seat Modules
 - ii. 10.25" x 24"
 - iii. Self Storing Aisle Rails AND End Rails
 - iv. ADA Notchouts
 - v. Vinyl End Curtains
 - vi. Limit Switches
 - vii. Seat Numbers and Row Letters
 - viii. Motorized
 - ix. **MSRP: \$115,425.00**

2. Reeves Rodgers: \$89,607.00

- (1) Bank of 83' x 8 Rows which include all the below:
 - i. 10" Excel Plastic Seat Modules
 - ii. 10.25" x 24"
 - iii. Self Storing Aisle Rails AND End Rails
 - iv. ADA Notchouts
 - v. Vinyl End Curtains
 - vi. Limit Switches
 - vii. Seat Numbers and Row Letters
 - viii. Motorized
 - ix. **MSRP: \$99,450.00**

Excludes:

1. State Sales & Use Taxes. Purchaser by acceptance of this quotation agrees to furnish Tax Exemption Certificates when requested on non-taxable materials, otherwise any applicable tax will be added at time of invoicing.
2. Architectural Fees
3. Any Liquidated, Consequential and/or Actual Damages clauses.
4. **All electrical work – By Others**
5. Patching and Painting
6. Note: Clean-up to be limited to removing all debris, dirt and rubbish accumulated as a result of our installation to a dumpster, leaving the premises broom clean and orderly.

TERMS: Net 30 Days

RESPECTFULLY,
Toadvine Enterprises

By *Sam Melchior*

ACCEPTED: _____
(name)

(date)



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Agenda Item Title: Approval of E-Rate Program Agreement of Intent

Board Meeting Date: February 13, 2024

Department: Technology

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

The Tennessee Education Broadband Consortium provides a field of vendors that provide Category 1 and Category 2 E-rate eligible goods and services. MCS obtains E-rate services based on the Metro Nashville Public Schools contract pursuant to RFP 16-11. This agreement of intent requires MCS to request a budget for those services in the upcoming fiscal year.

Staff Recommendation

Approve the E-Rate Program Agreement of Intent

Fiscal Impact

The total amount for services is \$1,009,320.00, however 80% of this amount is paid by E-Rate (\$807,456.00). MCS will be responsible for budgeting \$204,864.00 for the 2025 fiscal year.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Intent to Purchase Internet Access Services

This agreement of Intent ("Agreement") is initiated on (insert date) _____

between _____ (name of school system), hereinafter referred to as "Tennessee School System" and ENA Services, LLC, Nashville, Tennessee, hereinafter referred to as "ENA."

Tennessee School System agrees to obtain certain Internet Access, Telecommunication Services and/or Voice Services for the funding year(s) _____ to _____ from ENA, based on Metro Nashville Public Schools Contract pursuant to RFP 16-11 awarded 02-18-2016 (Tennessee E-rate Consortium).

Tennessee School system agrees to request budget for the requested services. However, this agreement of Intent may be null and void if funds for these services are not appropriated in the budget approved for the Tennessee School System for the applicable fiscal year.

In the event that the Tennessee School System's Universal Service E-Rate discount is not approved due to inaccurate certifications of the Tennessee School System to the FCC or SLD, ENA may recover 100% of the cost of delivered services from the Tennessee School System.

AGREED TO:

Tennessee School System: _____

Signature of Authorized Person _____

Printed name and Title of Authorized Person _____

Date Signed _____

For **ENA:**

Signature of Authorized Person _____

Printed Name and Title of Authorized Person: _____

Date Signed _____

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Request for Waiver by)
Tennessee E-Rate Consortium) File Nos. SLD-826426 et al.
Nashville, TN)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: August 2, 2019

Released: August 2, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a Request for Waiver filed by the Tennessee E-Rate Consortium (Tennessee Consortium or Consortium) seeking waiver of the Commission’s E-Rate1 competitive bidding rules for the funding year 2012 funding requests submitted by school districts that were not members of the Consortium at the time the Consortium’s contract was competitively bid.2 Based on our review of the record, and the unique circumstances presented here, we find that a limited waiver of the Commission’s E-Rate rules is warranted. Specifically, we find that the public interest is served given that the Consortium’s contract was competitively bid through a fair and open process, the contract operated as a “master contract” for the Consortium members,3 and there is no indication in the record of waste, fraud, or abuse. Additionally, granting a waiver here furthers the overall goals of the E-Rate program by ensuring that eligible entities receive much-needed funding to help connect students and teachers to high-speed broadband in today’s digital world. Strict enforcement of the Commission’s competitive bidding rules in this instance could undermine those interests, particularly because the rules did not clearly address the specific issue in question. Accordingly, we remand the funding requests listed in Appendix A to USAC to determine compliance with E-Rate program rules and requirements and for further action consistent with this Order. Additionally, we direct USAC to discontinue its recovery actions related to the funding requests listed in Appendix B and to reinstate these funding commitments no later than 60 calendar days from release of this Order.

1 The E-Rate program is formally known as the schools and libraries universal service support mechanism.

2 These funding requests are listed in Appendix A and Appendix B.

3 The Commission has not previously addressed whether a contract like the one entered into here is in fact a “master contract” or how applicants who intend for a contract to operate as a master contract should indicate such on their FCC Forms 470 or FCC Forms 471. In the absence of Commission guidance, the Bureau does not resolve the issue here. Rather, based on the record before us, we find that the Consortium’s contract, when viewed in the light of how the Tennessee Consortium structured itself and its members’ actions, operated in a manner that was sufficiently similar to how a “master contract” is treated under the Commission’s E-Rate program rules as to militate in favor of granting a limited waiver of the competitive bidding rules. We emphasize that this finding is based on the unique facts and circumstances before us.

II. BACKGROUND

A. E-Rate Program Rules and Requirements

2. Under the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.⁴ The Commission's rules require applicants to seek competitive bids for all eligible services for which they are considering requesting E-Rate support by submitting a completed FCC Form 470 to USAC.⁵ Eligible schools and libraries may form a consortium for the purpose of requesting competitive bids for eligible services.⁶

3. The completed FCC Form 470 must provide a description of the requested services sufficient to enable potential bidders to accurately determine the needs of the applicant.⁷ As part of that requirement, the FCC Form 470 "requires [applicants] to provide information about the entities that will receive the services" for which bids are sought.⁸ Applicants who are not seeking bids on a statewide basis must specify the total number of recipients of service included within the bid request,⁹ and identify the Billed Entity Number (BEN) for each of those entities in Block 4 of the FCC Form 470.¹⁰

4. After competitive bidding is concluded and a contract signed, an applicant must file an FCC Form 471 to request E-Rate support for the contracted services.¹¹ The FCC Form 471 requires that applicants identify the particular FCC Form 470 that sought bids for the requested services.¹² If an applicant cannot identify an FCC Form 470 that sought bids for the services requested on behalf of the eligible schools and libraries applying for E-Rate discounts (e.g., the BENs for the schools and libraries identified in the FCC Form 471 funding request do not match the BENs identified in Block 4 of the establishing FCC Form 470), the funding request may be denied on the grounds that the schools and libraries failed to commence and conduct an open and fair competitive bidding process for the requested services.¹³

5. Applicants that are not listed on an originating FCC Form 470 may still purchase services

⁴ 47 CFR §§ 54.501-54.505.

⁵ 47 CFR § 54.503(a)-(c); *see also* 47 CFR § 54.503(c)(1) ("An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process").

⁶ 47 CFR § 54.501(c)(1) (2011-2012); *see* 47 CFR § 54.500 ("A 'consortium' is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members"); *see also Request for Waiver of the Decision of the Universal Service Administrator by Tri-River Educational Computer Association, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4754, 4755, para. 3 (WCB 2007) (*Tri-River Order*).

⁷ 47 CFR § 54.503(c)(1)(ii); *see also Federal-State Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (subsequent history omitted).

⁸ Schools and Libraries Universal Service, Instructions for Completing the Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2004) (*2004 FCC Form 470 Instructions*) at 15, Block 4; Schools and Libraries Universal Service, Instructions for Completing the Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2010) (*2010 FCC Form 470 Instructions*), at 6, Block 1.

⁹ Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2004) (*2004 FCC Form 470*) at Block 4; Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2010) (*2010 FCC Form 470*) at Block 4.

¹⁰ *2004 FCC Form 470* at Block 4; *2010 FCC Form 470* at Block 4.

¹¹ 47 CFR § 54.504(a).

based upon that FCC Form 470 if the resulting contract is a competitively bid master contract.¹⁴ A master contract is a contract “negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider.”¹⁵

B. Tennessee Consortium Formation and Competitive Bidding Process

6. The Tennessee Consortium was formed in late 2010 and was initially comprised of 78 Tennessee public school districts.¹⁶ All 78 school districts were previously members of the Greeneville City Consortium (Greeneville Consortium), a nearly state-wide consortium formed in 2008. The Greeneville Consortium’s contract with Education Networks of America, Inc. and ENA Services, LLC (collectively, ENA) expired at the end of funding year 2011.¹⁷ Prior to the expiration of the ENA contract, the 78 school districts formed the Tennessee Consortium, with Metropolitan Nashville Public Schools (MNPS) as its lead.

7. On February 4, 2011, the Consortium submitted an FCC Form 470 and a Request for Proposals (RFP) to USAC, seeking bids for telecommunications services, Internet access services, and internal connections on behalf of the Consortium’s members for delivery in funding year 2011.¹⁸ The 78 school districts were all identified by BEN on Block 4 of the FCC Form 470.¹⁹ The RFP stated that “the method for all of the K-12 public school districts of Tennessee to purchase from this contract is TCA Title 12, Chapter 3, Part 10, which effectively allows Local Education Agencies (LEAs) to make purchases based on the terms of a contract signed by another LEA.”²⁰ After completing the competitive bidding process, MNPS signed a five-year service contract with ENA (the MNPS Contract).²¹ While the Consortium sought competitive bids on a consortium-wide level, every member entity filed separate FCC Forms 471, each of which indicated that their funding request was “covered under a master contract” and cited the MNPS Contract.²²

(Continued from previous page) _____

¹² See *Request for Review of a Decision of the Universal Service Administrator by Idaho Falls School District 91, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5512, 5513, para. 2 (WCB 2010) (*Idaho Falls Order*); see also *Schools and Libraries Universal Service, Description of Services Ordered and Certification Form 471*, OMB 3060-0806 (October 2010) (*FY2011 FCC Form 471*), at Block 5. The FCC Form 470 that an applicant identifies in its FCC Form 471 is commonly referred to as the “establishing” or “originating” FCC Form 470 for the funding request. See, e.g., *Request for Review of a Decision by the Universal Service Administrator by Coahoma County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11201, 11203, para. 5 (WCB 2011).

¹³ *2004 FCC Form 470* at Block 4 (“[i]f a Billed Entity cited on your Form 471 is not listed [in Block 4] below, funding may be denied for the funding requests associated with this Form 470.”); *2010 FCC Form 470* at Block 4 (same); see also 47 CFR § 54.503(a)-(c); *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8765, para. 10 (2007) (*Aberdeen Order*) (denying a waiver where the FCC Form 470 cited in the applicant’s funding request did not request bids for the services requested for a particular funding year).

¹⁴ See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 2372, paras. 232-33 (WCB 1997) (*Fourth Order on Reconsideration*).

¹⁵ 47 CFR § 54.500(g).

¹⁶ See Letter from Kimberly Friends, State E-rate Coordinator, Tennessee Department of Education, and Tom Bayersdorfer, Tennessee E-Rate Consortium Lead, Metropolitan Nashville Public Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Feb. 11, 2013) (Request for Waiver). The Request for Waiver consistently refers to 79 original school district members, but both the Consortium’s funding year 2011 FCC Form 470 and the Request for Proposals list 78 school district BENs. We therefore note 78 school districts when referring to the Consortium’s original membership throughout this Order. In addition, throughout its

(continued....)

8. Prior to the start of funding year 2012, an additional 43 school districts that also had been members of the Greeneville Consortium sought to join the Tennessee Consortium and purchase services for funding year 2012 via the MNPS Contract.²³ Each new school district filed a Letter of Agency (LOA) with the Tennessee Consortium.²⁴ Given that the 43 school districts were new members of the Consortium, none of them had been identified in Block 4 of the Consortium's originating, funding year 2011 FCC Form 470.²⁵

9. In preparation for the filing of their funding year 2012 E-Rate funding requests, an MNPS representative sought guidance from USAC as to whether new consortium members, when filing FCC Forms 471 requesting E-Rate discounts for services purchased through a multi-year contract, could rely on an FCC Form 470 that did not include them.²⁶ USAC indicated that such an action was procedurally acceptable.²⁷ In subsequent days, the MNPS representative made additional queries to USAC seeking further confirmation that consortia could add members by having the new members file an LOA prior to filing an FCC Form 471. USAC responded in the affirmative.²⁸

10. During the funding year 2012 application window, the 43 new Tennessee Consortium members each filed their own FCC Forms 471 seeking E-Rate support for funding year 2012 for services to be purchased at rates negotiated on behalf of the Consortium by MNPS and reflected in the MNPS Contract.²⁹ In all, 90 funding requests for funding year 2012 were filed by the new Consortium members, totaling slightly more than \$17 million and each citing to the Consortium's funding year 2011 FCC Form 470 as the establishing FCC Form 470. USAC initially approved 42 of the 90 funding requests, but subsequently rescinded nine of the approved funding requests due to a competitive bidding violation.³⁰ USAC issued Funding Commitment Decision Letters (FCDLs) denying an additional 46 funding requests due to the same competitive bidding violation.³¹ Specifically, USAC rescinded and denied the funding requests because the BENs listed on the FCC Forms 471 were not among those listed in Block 4 of the Consortium's funding year 2011 FCC Form 470.³² Many of the denial letters further stated that "the

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Request for Waiver, the Consortium occasionally refers to its members as Local Education Agencies (LEAs). LEAs are synonymous with public school districts in the E-Rate filings at issue and in this Order. *See 2004 FCC Form 470 at Block 1 (including LEAs within the "School District" type of application); 2010 FCC Form 470 at Block 1.*

¹⁷ Request for Waiver at 6. Funding year 2011 began on July 1, 2011 and ended on June 30, 2012.

¹⁸ *Id.* at 2; *see also* FCC Form 470 No. 534070000900066, Metropolitan Nashville Public Schools (Feb. 4, 2011), http://www.slforms.universalservice.org/Form470Expert/PrintPreviewFY8.aspx?appl_id=900066&fy=2011&src=search (*FY 2011 Tennessee Consortium FCC Form 470*); Metropolitan Nashville Public Schools, Request for Proposals: Managed Internet Access, Voice-Over-IP and Video Conferencing, RFP Number 11-4 (Feb. 4, 2011) (*Tennessee Consortium RFP*).

¹⁹ *See FY 2011 Tennessee Consortium FCC Form 470 at Block 4.*

²⁰ *Tennessee Consortium RFP at 4.*

²¹ Request for Waiver at 2. The MNPS Contract became effective on July 1, 2011 and expired on June 30, 2016. *See Contract Between Metropolitan Nashville Public Schools on Behalf of the Metropolitan Board of Public Education and ENA Services, LLC (MNPS Contract).*

²² Request for Waiver at 2.

²³ *Id.* at 3.

²⁴ *See, e.g.,* Letter of Agency for Funding Years 2011-2015, Athens City Schools, signed January 30, 2012.

²⁵ *Id.* at 3, 7; *see also* *FY 2011 Tennessee Consortium FCC Form 470 at Block 4.*

²⁶ Request for Waiver at 3. According to the Request for Waiver, the MNPS representative asked the following question: "Could new consortium members post a Form 471 funding request based on an awarded multi-year contract even though the new consortium members were not originally listed on the Form 470 posted in February 2011?" *Id.* at 3.

addition of your BEN would cause a change in the scope of services sought in the [competitive bidding] solicitation.”³³

C. Request for Waiver and Supplemental Filings

11. On February 11, 2013, the Tennessee Consortium filed a Request for Waiver, seeking a waiver of the competitive bidding requirements of section 54.503 of the Commission’s rules with respect to the funding year 2012 FCC Forms 471 identified in Appendix A and Appendix B.³⁴ The Consortium argues that the Commission’s rules are silent as to whether new members may join a consortium after the competitive bidding process has closed.³⁵ The Consortium also asserts that the addition of the new members here would not have changed the scope of the bids or outcome of the competitive bidding process, and that a waiver is warranted based on its detrimental reliance on USAC’s guidance and the economic hardship that would result if a waiver is not granted.³⁶ The Consortium’s service provider, ENA, subsequently submitted *ex parte* filings in 2014 and 2018 in support of the Consortium’s Request for Waiver.³⁷ In its filings, ENA argues that Tennessee state law allowed the new members to purchase off of the MNPS Contract without engaging in their own competitive bidding process, and that the contract’s scope was not changed because the contract acted as a master contract.³⁸

III. DISCUSSION

12. Based on a review of the record and the unique circumstances presented here, we grant the Tennessee Consortium’s Request for Waiver and remand the funding year 2012 funding requests listed in Appendix A to USAC for further action consistent with this Order. In addition, we direct USAC to discontinue its recovery actions related to the funding requests listed in Appendix B and to reinstate these funding commitments. The Tennessee Consortium does not specify the provision within section 54.503 of the Commission’s rules for which it seeks a waiver; however, because USAC’s determination for denying the FCC Form 471 applications at issue in this proceeding was based on the Consortium’s

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²⁷ *Id.*

²⁸ *Id.*, Exhs. C, D.

²⁹ Request for Waiver at 4; *see, e.g.*, Email from Craig Clayton, Sumner County Schools, to Maria Donawa, USAC (dated Jan. 2, 2013) (“We then signed individual contracts with ENA and proceeded to file our Form 471s and associated funding requests . . .”).

³⁰ *See* Request for Waiver at 4-5; *see also* Appendix B.

³¹ Two funding requests were cancelled by their respective applicants. *See* Letter from USAC, Schools and Libraries Division, to Larry Stein, Sweetwater City School District (dated June 17, 2013) (confirming cancellation of FRN # 2341989); Letter from USAC, Schools and Libraries Division, to Will Lockert, Cheatham County School District (dated Mar. 18, 2013) (confirming cancellation of FRN # 2324017).

³² Request for Waiver at 4-5; *see, e.g.*, Letter from USAC, Schools and Libraries Division, to Curtis Fullbright, Washington County School District at 3 (dated Jan. 23, 2013).

³³ *See, e.g.*, Letter from USAC, Schools and Libraries Division, to Karen Allen, Loudon County School District at 3 (dated Jan. 29, 2013). The COMAD letters stated that the funding requests must be rescinded in full because “[t]he billed entities in Block 4 of the FCC Form 471 were not listed in Block 4 of FCC Form 470 # 534070000900066 that established the competitive bidding process for the FCC Form 471.” *See, e.g.*, Letter from USAC, Schools and Libraries Division, to Jill Cloyd, White County School District at 4 (dated Jan. 30, 2013) (regarding FRN # 2263029) (explaining that “[p]rogram rules require that the billed entity filing an FCC Form 471 application also be identified on the establishing FCC Form 470 in order to ensure that potential bidders were aware of the scope of work being requested”).

³⁴ Request for Waiver; Letter from Kimberly Friends, State E-rate Coordinator, Tennessee Department of Education, and Tom Bayersdorfer, Tennessee E-Rate Consortium Lead, Metropolitan Nashville Public Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Dec. 17, 2013) (Supplement to Request for Waiver) (clarifying that the Consortium only seeks a waiver with respect to funding year 2012).

failure to include the 43 new Consortium members in Block 4 of the Consortium's originating funding year 2011 FCC Form 470 filing, we treat the Consortium's request as seeking a waiver of sections 54.503 (a) and (c) of the Commission's rules.³⁹

13. Generally, the Commission's rules may be waived for good cause shown.⁴⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴² Here, although the Consortium failed to include the 43 members on the originating FCC Form 470 in violation of the requirement that a consortium applicant specify the total number of eligible entities included within the bid request and identify the BEN for each of these entities in Block 4 of the form,⁴³ we find that the policy behind our rules is not frustrated by a grant of a waiver in this limited circumstance where: (1) potential bidders were on notice that the list of potential recipients of service might expand beyond the original 78 Consortium members; (2) the competitive bidding process that resulted in the MNPS Contract was fair, open, and compliant with our competitive bidding rules; and (3) the MNPS Contract operated as a "master contract."

14. The requirement that consortia specify the total number of eligible entities included within the bid request and identify the BEN for each entity in Block 4 of the FCC Form 470 is intended to help potential bidders identify the "entities that will . . . pay[] bills directly to the service provider(s) for the services" described in the FCC Form 470 and that will file the FCC Form 471 to request E-Rate discounts for those services.⁴⁴ Stated differently, the information allows "interested service providers [to] identify . . . potential customer[s] and compete to serve [them]."⁴⁵ We find no evidence that the Consortium's omission in this instance hampered the ability of potential bidders to do so here.

15. Central to our conclusion is the Consortium's direct reference to Tennessee state law in its RFP, which put potential bidders on notice that the possible recipients of service could expand in the future. Specifically, the second paragraph of the Consortium's RFP stated that "the method for all of the

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³⁵ Request for Waiver at 6.

³⁶ Request for Waiver at 7-9.

³⁷ See Letter from James M. Smith and Danielle Frappier, Counsel for Education Networks of America, Inc. and ENA Services, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, at 4-9 (Oct. 1, 2014) (ENA First Ex Parte); Letter from Gina Spade, Broadband Legal Strategies, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Nov. 26, 2018) (ENA Second Ex Parte).

³⁸ See ENA Second Ex Parte at 1.

³⁹ 47 CFR §54.503(a)(requiring all E-Rate program participants to conduct a fair and open competitive bidding process); 47 CFR §54.503(c)(requiring participants to submit a completed FCC Form 470 to USAC to initiate the competitive bidding process and specifying the minimum information to be included). The Request for Waiver (at 10) also seeks a waiver of "applicable sections" of Section 54.502 of the Commission's rules, which governs eligible services. Because USAC did not base its determinations on whether the services sought were eligible, we dismiss the request to waive Section 54.502.

⁴⁰ 47 CFR § 1.3.

⁴¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁴³ 2004 FCC Form 470 Instructions at 15, Block 4; 2010 FCC Form 470 Instructions at 6, Block 1; 2004 FCC Form 470 at Block 4; 2010 FCC Form 470 at Block 4.

⁴⁴ 2004 FCC Form 470 Instructions at 16, Block 4; 2010 FCC Form 470 Instructions at 9, Block 4.

⁴⁵ 2004 FCC Form 470 at 1; 2010 FCC Form 470 at 1.

K-12 public school districts of Tennessee to purchase from this contract is TCA Title 12, Chapter 3, Part 10, which effectively allows Local Education Agencies (LEAs) to make purchases based on the terms of a contract signed by another LEA.⁴⁶ As a result, an interested service provider was on notice of the potential state-wide reach of the contract; and, consequently, was alerted to the fact that the recipients listed in Block 4 of the Consortium's FCC Form 470 might not represent the total number of recipients who could ultimately seek service under the contract's terms.

16. The core issue at hand is under what circumstances can members be added to a consortium and be beneficiaries of previously established consortium agreements that are still in effect without necessitating a new competitive bid process.⁴⁷ We note, as an initial matter, that nothing in our rules or orders expressly prohibits consortia from adding members after the conclusion of the competitive bidding process. At most, the Commission has held that consortia cannot add members during the course of the funding year because doing so would create untenable administrative burdens for USAC.⁴⁸ Specifically, the Commission was concerned that allowing consortia to add members during a funding year would require consortia to continually update their applications, in turn causing USAC to continually re-review and process applications. Review of applications would thus be delayed and further complicated because the number of recipients of service could change at any time during the course of the funding year.⁴⁹

17. Those concerns are not present here. The new Tennessee Consortium members filed their LOAs with the Consortium well in advance of the funding year 2012 window. USAC therefore knew precisely how many Consortium members were associated with the MNPS Contract prior to reviewing the applications for that funding year. Additionally, because each Consortium member filed individual FCC Forms 471, review of the applications would be limited to only that specific member, not the entire Consortium. The total number of recipients would therefore have no impact on the speed of the review for any individual application. Accordingly, we do not find the addition of the 43 new members to the Tennessee Consortium after funding year 2011 posed any undue administrative burdens on USAC.

18. We must also consider whether the new members can avail themselves of the MNPS Contract. Consistent with the Commission's promotion of consortia as an effective means of realizing the cost savings associated with enhanced bargaining power, the Consortium's purpose here was to leverage its group purchasing power to secure Internet access and telecommunications services at a price that no individual district could command on its own.⁵⁰ The Consortium then provided access to the negotiated contract to its members, each of whom individually purchased their preferred services—an approach that is generally consistent with our definition of a master contract.

⁴⁶ *Tennessee Consortium RFP* at 4. See Tenn. Code Ann. § 12-3-1004(b)(1) ("Any local [LEA] may purchase equipment under the same terms of a legal bid initiated by any other LEA in Tennessee."); Tenn. Code Ann. § 12-3-1004(b)(2)(A) ("Any LEA may purchase directly from a vendor the same equipment at the same price and under the same terms as provided in a contract for such equipment entered into by any other LEA.")

⁴⁷ Indeed, if the 43 entities had joined the Consortium from its inception and were omitted from Block 4 of the Consortium's originating FCC Form 470, a different issue would be presented.

⁴⁸ See *Request for Review of the Decision of the Universal Service Administrator by Kan-Ed, Kansas Board of Regents*, CC Docket No. 02-6, Order, 21 FCC Rcd 13658, 13662, para. 10 (2006) (*Kan-Ed Order*).

⁴⁹ *Id.*

⁵⁰ See *Modernizing the E-Rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8939, paras. 168-173 (2014) (*2014 First E-Rate Order*). We note too that the FCC Form 470 instructions in effect at the time generally confirm that this is the role the Commission envisioned consortia would play. See *2004 FCC Form 470 Instructions* at 16, Block 4; *2010 FCC Form 470 Instructions* at 9, Block 4 (consortia are expected to "aggregate demand and thus secure a better price on [services] that each district will then contract for and pay individually").

19. Section 54.500 of the Commission's rules defines a master contract as "a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider."⁵¹ The MNPS Contract effectively operated as a master contract created for the benefit of the Consortium's members, from which the new members could purchase services without themselves having to undergo a new competitive bidding process. The evidence in the record supports our conclusion that the MNPS Contract operated as a master contract. Most notably, Block 5, Section 15c of the FCC Form 471 instructed applicants to "check this box if this Funding Request is covered under a master contract."⁵² All 78 original Consortium members checked the box in funding year 2011, as did each of the 43 newly added members in funding year 2012.⁵³ They thus clearly indicated that they thought of the MNPS Contract as a master contract.

20. Additionally, when USAC asked one of the new Consortium members to explain its relationship with the Consortium, the district responded that it had signed an LOA to join the Consortium for the 2012-2013 academic year, and that doing so "authorized us to purchase services directly from the contract that was awarded to ENA."⁵⁴ The school district's response is further evidence that the new districts understood the signing of an LOA to grant them membership to the Consortium, and thus access to the Consortium's negotiated contract. We acknowledge that although our rules define master contracts, they do not clearly instruct applicants on how to indicate that they are purchasing off of such a contract. Notwithstanding, the evidence in the record points clearly to the Consortium members' understanding of the MNPS Contract as a master contract.

21. We have previously held that applicants purchasing off of a master contract are not required to engage in their own competitive bidding process, provided the master contract was itself competitively bid.⁵⁵ Based on the record before us, the competitive bidding process that resulted in the MNPS Contract was fair, open, and fully compliant with our rules. For example, all of the entities that were members of the Consortium at the time were properly included in the relevant FCC Form 470 and RFP. The FCC Form 470 was also posted on USAC's web page for the required, minimum 28-day period, and sufficiently described the services that were being requested as required by our rules.⁵⁶ In addition, the bid evaluation matrix used price as the primary factor,⁵⁷ there is no evidence of service provider involvement before or during the competitive bidding evaluation process, and there is no indication of waste, fraud, or abuse present in the record.

22. We emphasize that no single factor here would rise to the level of special circumstances if considered in isolation. Rather, it is the totality of circumstances that justify deviation from our general rules. In this case, we recognize an ambiguity in our competitive bidding rules regarding how those rules relate to the real-world realities of consortia's changing memberships. The Consortium took several good-faith steps to resolve that confusion before seeking funding for its new members and only acted after receiving multiple assurances from USAC that its actions were within the rules. Moreover, we find no hint of waste, fraud, or abuse in the Consortium's actions. Nor was there any significant harm to potential bidders because they were on notice of the potential state-wide reach of the MNPS Contract.

⁵¹ 47 CFR § 54.500.

⁵² *2004 FCC Form 471* at Block 15; *2010 FCC Form 471* at Block 15.

⁵³ *See, e.g.*, FY2011 FCC Form 471 No. 817733, Hardeman County School District (March 24, 2011).

⁵⁴ *See, e.g.*, FY 2012 FCC Form 471 No. 852000, Loudon County School District (March 8, 2012).

⁵⁵ *Fourth Order on Reconsideration*, 13 FCC Rcd at 2372, para. 233.

⁵⁶ *See* 47 CFR § 54.503(c).

⁵⁷ *See* 47 CFR § 54.504(a)(xi).

23. Additionally, granting a waiver here furthers the general purposes of the E-Rate program by ensuring that eligible entities receive much-needed funding. There is also a legitimate public interest in encouraging participation in E-Rate consortia. Strict enforcement of the competitive bidding rules in this instance could undermine those interests, particularly because the rules did not clearly address the specific issue in question. Accordingly, we disagree with USAC's conclusion that the addition of the 43 new Consortium members in this situation necessitated a new competitive bidding process.⁵⁸

24. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed by the Tennessee E-Rate Consortium on February 11, 2013, IS GRANTED.

25. IT IS FURTHER ORDERED, pursuant to the authority contained in section 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), section 54.503 is WAIVED to the extent described herein.

26. IT IS FURTHER ORDERED, pursuant to sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), that the applications that were denied and identified in Appendix A ARE REMANDED to USAC for further action in accordance with the terms of this order.

27. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, sections 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and the authority delegated to the Bureau in the *2014 First E-Rate Order*, 29 FCC Rcd at 8829, 8945, paras. 133 and 189, that USAC SHALL DISCONTINUE its recovery actions related to the funding requests that were rescinded and identified in Appendix B and SHALL REINSTATE these funding commitments no later than 60 calendar days from release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

⁵⁸ See, e.g., Letter from USAC, Schools and Libraries Division, to Karen Allen, Loudon County School District at 3 (dated Jan. 29, 2013).

APPENDIX A
Remanded Funding Year 2012 Funding Requests

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Cannon County School District	826426	2258026	128255	\$316,651.20
Clinton City School District	833670	2262879	128338	\$96,471.36
Clinton City School District	833671	2262884	128338	\$22,626.10
Cumberland County School District	832021	2259329	128515	\$296,265.60
Cumberland County School District	839066	2276298	128515	\$19,440.00
Grainger County School District	843441	2289759	128393	\$264,499.20
Grainger County School District	843443	2289770	128393	\$61,824.23
Grainger County School District	843442	2289766	128393	\$8,856.00
Grundy County Schools	857728	2333803	128262	\$273,087.60
Hardin County School District	840362	2279811	128488	\$278,672.40
Hardin County School District	840365	2279822	128488	\$42,041.43
Hardin County School District	840367	2279829	128488	\$2,916.00
Hawkins County School District	834701	2265400	128390	\$383,256.72
Henderson County School District	839656	2292435	128480	\$263,232.00
Henderson County School District	839661	2292439	128480	\$39,129.60
Henderson County School District	844234	2292446	128480	\$15,360.00
Kingsport City School District	835300	2267054	128331	\$285,759.36
Lake County School	854749	2324795	128436	\$147,590.28
Lake County School	854753	2324805	128436	\$9,396.00
Lauderdale County School District	841585	2283653	128430	\$285,171.60

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Lauderdale County School District	841588	2283666	128430	\$31,181.40
Lauderdale County School District	841590	2283679	128430	\$5,100.00
Lawrence County School District	840358	2279776	128499	\$309,024.00
Lawrence County School District	840361	2279791	128499	\$26,901.60
Loudon County School District	832413	2263727	128362	\$246,909.60
Loudon County School District	832413	2263743	128362	\$124,300.84
Loudon County School District	852000	2315892	128362	\$36,806.40
Maryville City School District	828271	2253167	128366	\$170,553.60
Maryville City School District	841579	2283639	128366	\$17,139.60
Maryville City School District	833091	2261575	128366	\$3,628.80
Memphis City School District	841086	2281897	128441	\$3,501,576.00
Memphis City School District	841087	2281906	128441	\$3,498,751.98
Memphis City School District	841031	2281692	128441	\$413,194.32
Memphis City School District	841084	2281893	128441	\$363,660.07
Overton County School District	845721	2296874	128522	\$61,653.96
Overton County School District	845723	2296877	128522	\$3,888.00
Polk County School District	835888	2268718	128269	\$214,837.20
Polk County School District	835890	2268721	128269	\$21,991.18
Polk County School District	835893	2268723	128269	\$11,952.00

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Putnam County School District	860153	2341353	128509	\$546,915.60
Putnam County School District	860171	2341388	128509	\$17,069.98
Putnam County School District	860186	2341414	128509	\$5,544.00
Sumner County School District	837167	2297616	128225	\$494,466.00
Sumner County School District	837167	2297644	128225	\$85,460.27
Washington County School District	851996	2315887	128328	\$326,424.00
Washington County School District	852001	2315893	128328	\$16,800.00

APPENDIX B
Reinstated Funding Year 2012 Funding Requests

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Clay County School District	838454	2274823	128513	\$39,360.00
Kingsport City School District	835301	2267056	128331	\$5,257.80
Murfreesboro City School District	830590	2256097	128241	\$141,036.00
Murfreesboro City School District	830591	2256098	128241	\$23,520.00
Scott County School System	839067	2302564	128350	\$194,400.00
West Carroll Special School District	828273	2257832	128457	\$83,836.80
West Carroll Special School District	831434	2257847	128457	\$5,904.00
White County School District	832025	2263029	128525	\$234,880.80
White County School District	834111	2264016	128525	\$3,345.60



Department of
Education

District Guide to the E-rate Mini-Bid Process

In Support of the Tennessee Education
Broadband Consortium (TEBC)

Tennessee Department of Education | Procedure Guide | March 2016

Executive Summary

In October 2015, the Tennessee Department of Education began an initiative to take a holistic view of the state of E-rate in the State of Tennessee. After consultation with E-rate professionals at the federal and state levels and a series of town halls with district superintendents and technology professionals, the decision was made to take a bold step and create a uniquely Tennessee solution to the challenges districts face participating in the E-rate program.

By December 2015, the Tennessee Education Broadband Consortium (TEBC) had filed its first FCC Form 470. The related Request for Qualifications (RFQ) would ultimately yield a collection of statewide master contracts providing a vetted field of vendors providing Category 1 and Category 2 E-rate eligible goods and services. This multivendor procurement offering will provide districts a cost-effective mechanism by which E-rate eligible goods and services may be purchased while supporting district choice through a verifiable mini-bid process.

This guide will provide districts detailed steps to conduct and participate in a successful mini-bid process culminating in a FCC Form 471 filing. There are no guarantees that any E-rate transaction will avoid the scrutiny of an USAC audit. In fact, all E-rate transactions are guaranteed TO be reviewed at different steps of the process. Following the steps in this guide will assist in making transactions conducted under the TEBC umbrella more audit/review friendly.

This initiative was driven by the following strategic goals:

Overarching Goals

- Create a cost-effective procurement vehicle available to districts for the purchase of E-rate eligible goods and services
- Create a procurement process which complies with FCC polices and USAC procedures regarding the E-rate program
- Create a procurement process which supports compliance with local fiscal and procurement regulations
- Support the principle of district choice by allowing districts to complies craft locally appropriate solutions through prescriptive and verifiable procurement procedures

Mini-Bid Preliminary Tasks

Introduction

Before the actual mini-bid can be conducted, there are several items which must be in place to assure that procurement activities may go forward. As each step is reviewed, be sure to allow appropriate time in your procurement schedule for each body of work to complete. While some of the steps described below will be “Year 1” items only, others will become a part of your annual E-rate procurement process.

Beginning with the Funding Year 2016 application process, several steps must be completed in the E-rate Productivity Center (EPC). This online resource will be the main point of entry for most items related to the application for E-rate eligible goods and services. From this point forward, this portal will be simply referred to as EPC (pronounced EPiC). General guidance about registration in the EPC system can be found in the “TN E-rate for Beginners” slide deck at <http://tn.gov/education/erate>.

Beginning with the Funding Year 2016 application process, several steps must be completed in the E-rate Productivity Center (EPC).

Note: You **MUST** have an account in EPC to apply for E-rate funding. Over the next six months, all E-rate forms, letters and interactions will be phased into the EPC portal system. There are several advantages to the new system including:

- All forms, submitted documentation, and requests will be archived in a single location
- Forms will be pre-populated with form-relevant information based upon information entered during the EPC profile update process
- USAC review processes will be streamlined facilitating more expeditious funding replies to districts

Consortium Linking in EPC

Before you issue your mini-bid requests, your district’s EPC Full and/or Partial Rights Users **MUST** link your district to the Tennessee Education Broadband Consortium (BEN 128260). Most districts completed this work during their Letter of Agency submissions in December 2015. Screenshot of the process can be found in the “ADD TN Education Broadband Consortium in EPC” document at <http://tn.gov/education/erate>.

Vendor Participation during Equipment/Services Needs List Determination

E-rate rules prohibit vendors who may respond to your request from providing the equipment and service list that will become part of the mini-bid. Service providers are allowed to answer general questions about the products and services they sell in response to applicant inquiries, but they may not prepare any part of a specifications sheet that will be used by the applicant for conducting competitive procurement. If exact model numbers or specifications are unknown by the applicant, list the manufacturer (assuming there is a preference) and generally describe the components and services where are required.

Contract Requirements

For Funding Year 2016, a vendor contract will be created as a result of the evaluation of a mini-bid process. For TEBC, this resulting contract will be the TEBC SMC Order Form. This form will be available at <http://tn.gov/education/erate>. The form will memorialize the transaction for future review while assuring that all terms and conditions of the procurement are clearly understood by both the district and the vendor.

Vendor Listing by Category

A complete listing of all of the vendors by category offering will be made available to districts. The document will also include name, email, and phone contact information for establishing communications with participating vendors. This list will be maintained by the department as information requires updating. The list will remain available at <http://tn.gov/education/erate> for download by districts.

Bid Evaluation Matrix Template

The department will be providing a template for use during the evaluation phase of the mini-bid process. While districts have the ability to craft their own evaluation matrices, the department strongly recommends the use of this template to guide the process.

The primary purpose of the mini-bid is to determine the most cost-effective, district-appropriate solution for an E-rate eligible need which can be provided by an approved TEBC vendor. The template sets the scoring of cost to 50 percent very deliberately. FCC rules require that the cost of E-rate eligible goods and services must be the most heavily weighted factor in the evaluation process. Given the attention the FCC is putting upon cost-effectiveness, the department's suggestion of this weight to cost in the evaluation template is preemptive of a potential prescriptive action by the FCC to require cost be given at least 50 percent of available points.

Mini-bid Reviews

Mini-bid Outcome Evaluation. The department's E-rate team will, at the request of the district, review the process and results of a district mini-bid process prior to contract award and filing of the FCC Form 471. The review would be documented and become part of the district procurement record. The following are the benefits of such a review:

1. Provides a third-party review of the overall process to assure that all policy and regulations have been followed.
2. Provides additional document during a USAC review that all due diligence has been taken to assure that an accurate and cost-effective district solution has been developed and implemented.
3. Provides additional support for district technology and E-rate professionals in the event that any questions arise during or after the process.

It is important to note that **this does not constitute an audit of the district**. This is a support to assist district personnel at every level of the E-rate process and arrive at a successful outcome for the students for which this program is focused upon.

Additional Comments on Review and Audits

Throughout the establishment process of the TEBC, efforts have been made at each level, at each process to make this offering as cost-effective and transparent as possible. Each decision was made through the lens of an audit process to assure the best possible procurement vehicle for our districts to obtain E-rate eligible goods and services. This fact withstanding, the Tennessee Department of Education cannot make any guarantees that a particular E-rate application process will not be audited by USAC. To the contrary, the nature of the program itself makes it inevitable that reviews and audits will routinely take place.

Districts that follow the guidelines provided by the state are assured to have a complete set of documentation ready for review when audit opportunities arise. Additionally, the state E-rate team will provide full support to districts during the audit or review process. **In short, districts using the TEBC process will not be left on their own to deal with audits and reviews.**

The Mini-Bid Process: By the Steps

Overview

The mini-bid process will follow a six (6) step process:

Step 1: Create Needs List

- For Category 1 (Area of Focus 1 / broadband and voice), create a list of locations with service location addresses and capacity requirements.
- For Category 2 (Area of Focus 2 / internal connections), create a list of required equipment including as much manufacturer and model information as possible.
- For Category 2 (Area of Focus 3 / MIBS), create a list of locations with service location addresses and connection capacity requirements

Step 2: Compose Email to Potential Vendors

- Compose email including local procurement requirements, communications rules, and logistics information.

Step 3: Determine All Vendors in Category

- Use state supplied vendor list to create mail-merge friendly vendor list for the specific category of interest.

Figure 1 - Steps 1 - 3 of the mini-bid process.

Step 1: Create Needs List

Create a list of needs for the procurement. The list of needs for Category 1 and Category 2 will look somewhat different. *Please note the guidance in the first section of the document regarding the use of vendor provided specification in the mini-bid solicitation.*

For Category 1 broadband services (Internet Access and/or Transport Circuits) (Area of Focus 1), the district must provide a list of locations with complete service location addresses and the quantity and bandwidth/type of services requested at each location. Be certain to include installation (NRC), if needed, in the needs listing. This request should not only take into account current broadband needs, but it should also include the consideration of future network demands. Consider the question, what would happen if four (4) classrooms of 25 children began streaming a video at the exact same time?

For Category 1 Voice services, include the type/quantity of services using the appropriate template (VoIP, Analog/Fax/POTS or Cellular). If requesting VoIP and/or Analog/Fax/POTS, be sure to include the site name and 911 addresses for where services are to be delivered.

For Category 2 internal connections (Area of Focus 2), the district must provide a list of equipment needed for the procurement. Provide as much information about make and model as possible. In circumstances where a manufacturer preference is not indicated or a particular model of product is unknown, specify as much information as possible and be responsive to vendor questions when they are submitted.

For Category 2 managed internal broadband services (Area of Focus 3), the district must provide a list of locations with complete service location addresses and the services required at each location. Additionally, the district must specify the MIBS equipment model — district-owned or leased. If the district-owned model is preferred, a list of equipment, which will be used as part of the managed service must be provided.

Attach the resulting needs lists to your cover email which will be sent to all vendors within the identified area of focus.

Step 2: Compose E-mail to Potential Vendors

Compose an email to all possible vendors within the identified area of focus announce the procurement opportunity. The email should include

- any local procurement policies and procedures (possible disqualification factors)
- protocols regarding communications with vendors (email only, email/phone, etc.)
- pre-bid meeting information (if applicable, not required); and
- due date and time for responses

A sample email has been attached for modification and use by district personnel.

Step 4: Conduct Bid Evaluation and Review

- State has provided a evaluation matrix template to assist in the evaluation process.
- Strongly recommended that cost be at least 50% of the evaluation points.

Step 5: Notify Winning Vendor / Sign Contracts

- Communicate award to selected vendor.
- Make sure to include language about school board approval and E-rate funding approval contingencies.

Step 6: Update Contract Record in EPC

- All aspects of the bidding and award process must be entered into EPC.

Figure 2 - Steps 4 - 6 of the mini-bid process.

Step 3: Determine All Vendors in “Category”

The state has provided a document which lists all of the qualified vendors within the TEBC. The document breaks down the listing by category of service. The lists include contact name, email, and phone number information. Individual tabs have been created for each area of focus and scope item. District procurement personnel can additionally use the Excel filtering feature to easily create a mail-merge friendly listing. This list can be obtained from <http://tn.gov/education/erate>.

Step 4: Conduct Bid Evaluation and Review

Using the vendor responses to the mini-bid request, districts will conduct an evaluation of the bid responses, using the state supplied template. The template will calculate the winner of the mini-bid based upon the cost response and the locally assigned values to the remaining evaluation criteria. As stated at the beginning of the guide, cost must be the most heavily weighted factor in the evaluation. The state strongly recommends that cost be weighted at no less than 50 percent of the total points available.

Once a winner has been identified by the district, district E-rate and procurement personnel may submit the response(s) and evaluation matrix to the state E-rate team for review and comments. Once the district receives this feedback, district personnel will complete the potential contractor award process.

Step 5: Notify Winning Vendor / Sign Contracts

The district will send an email to the winning vendor. Other forms of communications may be used to memorialize the award in accordance with local procurement law. The district will complete the TEBC SMC order form to retain with their local procurement records. A sample notification email has been attached.

District E-rate personnel should include language in the award letter and subsequent contract that reiterate contingency upon school board approval and E-rate funding approval. When scheduling the contract execution process, districts may also need to include time for review by municipal / county government fiscal committees depending on under which financial management act the local government is organized.

Step 6: Update Contract Record in EPC

Once the final agreement has been authorized and approved by the local school board, the contract must be entered into EPC. More information about the entry process can be found in the “2016 Contracts Module” PowerPoint slide deck at <http://tn.gov/education/erate>.

Final Thoughts

The creation of the TEBC and its processes were district-driven decisions. At the end of the day, all parties involved have the same goal — the delivery of high-quality broadband access for all students within the state of Tennessee. The TEBC seeks to facilitate the accurate, cost-effective, and transparent procurement of E-rate eligible goods and services by districts using verifiable and procedurally sound techniques.

District input has been and will continue to be an essential part of this initiative. Please submit any comments, questions and/or concerns to Erate.K12@tn.gov.

**CONTRACT**

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date January 15, 2021	End Date January 14, 2026	Agency Tracking # 33104-00220	Edison Record ID 68881		
Contractor Legal Entity Name Education Networks of America Inc.				Edison Vendor ID 0000083569	
Goods or Services Caption (one line only) E-Rate Category 1 Broadband Services					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2022	\$47,000.00				\$47,000.00
2023	\$47,000.00				\$47,000.00
2024	\$47,000.00				\$47,000.00
2025	\$47,000.00				\$47,000.00
2026	\$47,000.00				\$47,000.00
TOTAL:	\$235,000.00				\$235,000.00
Contractor Ownership Characteristics:					
<input type="checkbox"/> Minority Business Enterprise (MBE):					
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> Competitive Selection		Supplier selected via RFQ 33104-00220			
<input type="checkbox"/> Other					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
Speed Chart (optional)		Account Code (optional)			

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE DEPARTMENT OF EDUCATION
AND
EDUCATION NETWORKS OF AMERICA INC.**

This Contract, by and between the State of Tennessee, Tennessee Department of Education ("State") and Education Networks of America Inc. ("Contractor"), is for the provision of E-Rate Program for Tennessee Local Education Agencies – Category One – TEBC - Tennessee Education Broadband Consortium, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 0000083569

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. Category 1 ("Category 1"): One of two service categories defined in the FCC's Eligible Services List. This category focuses on broadband products/services within a school building or school district.
 - b. Charter School ("Charter School"): A Charter School is a publicly funded independent school established by teachers, parents, or community groups under the terms of a charter with a local Tennessee school district.
 - c. Domain Name System ("DNS"): The Domain Name System is a network of directories on the Internet used to resolve host names (e.g., www.tn.gov) into machine-readable IP addresses (e.g., 192.264.1.1.81).
 - d. Dynamic Host Configuration Protocol ("DHCP"): Dynamic Host Configuration Protocol is a network protocol used on IP networks where a DHCP service automatically assigns an IP address and other information to each host on the network so they can communicate efficiently with other endpoints.
 - e. Eligible Services List ("ESL"): The Eligible Services List is released by the FCC prior to the opening of the Form 471 application filing window opens. This list contains a description of the products and services that will be eligible for discounts, along with additional helpful information such as eligibility conditions for each category of service for each specified funding year.
 - f. E-Rate ("E-Rate"): E-Rate is the Schools and Libraries Program funded via the Universal Service Fund and administrated by USAC. The E-Rate program is responsible for the discounts funding provided to schools and libraries across the nation for procurement of broadband services to the building and into the school and/or classroom or public area of a library.
 - g. Federal Communications Commission ("FCC"): The Federal Communications Commission is an independent agency of the United State government created by statute (47 U.S.C. § 151 and 47 U.S.C. § 154) to regulate interstate communications by radio, television, wire, satellite, and cable.

- h. Form 471 ("Form 471"): Form 471 is the Services Ordered and Certification Form and is the form by which E-Rate applicants requested discounts for eligible products and/or services. This form is required to be filed annually during the Form 471 application window.
 - i. Form 472 ("Form 472"): Form 472 is the Billed Entity Applicant Reimbursement (BEAR) form which is used by the Billed Entity to request E-Rate discount reimbursement for eligible products/services received on or after the effective date of discounts and already paid for by the applicant.
 - j. Form 473 ("Form 473"): E-Rate service providers file an FCC Form 473 (Service Provider Annual Certification {SPAC}) to certify they are compliant with Schools and Libraries (E-Rate) Program rules. Service providers must have a SPAC Form on file for each funding year they participate in the E-Rate Program and for each Service Provider Identification Number (SPIN and/or Form 498 ID). This form is required by the program in order for invoices to be paid to the service provider.
 - k. Form 498 ("Form 498"): Form 498 is the Service Provider Identification Number and General Contract Information Form and is used to collect contract, remittance, and payment information for service providers that receive support from the federal universal service programs. If an applicant opts to use Form 472 for reimbursement of their approved discounts, they too are required to complete FCC Form 498.
 - l. Local Education Agency ("LEA"): For the purposes of the Contract, Local Education Agency is the term used to collectively refer to all Tennessee public Local Education Agencies, Charter Schools, State schools, the Achievement School District, the Department of Children's Services, and library systems in the State of Tennessee.
 - m. Red Light Status ("Red Light Status"): A Red Light Status indicates a company has one or more delinquent bills that will prevent the company from conducting business with the government. If you have one or more delinquent bills that were paid and are currently being processed, a Red Light Status will display.
 - n. Service Level Agreement / Quality of Service Agreement ("SLA / QoS"): A Service Level Agreement or a Quality of Service Agreement define the level of service a customer expects from a vendor, laying out the metrics by which service is measured, as well as remedies or penalties should the service levels not be achieved.
 - o. Schools and Libraries Division ("SLD"): Schools and Libraries Division is a division of USAC that administers the E-Rate Program.
 - p. Scope of Work ("SOW"): A Scope of Work is the area in an agreement where the work to be performed is described. The SOW should contain any milestones, reports, deliverables, and end products that are expected to be provided by the performing party. The SOW should also contain a timeline for all deliverables.
 - q. Universal Service Administration Company ("USAC"): An independent, not-for-profit corporation created by the FCC to administer the four (4) universal service programs (Schools and Libraries, Rural Health Care, Lifeline, High Cost) which help provide communities across the country with access to affordable telecommunications services.
 - r. Wide Area Network ("WAN"): Wide Area Network is a telecommunication network or computer network that extends over a large geographical distance.
- A.3. **Basic Conduit Internet Access.** The Contractor shall provide Basic Conduit Access to the internet, a service that provides broadband connectivity between the Internet and one (1) or more eligible locations within an LEA or group of schools. Non-Exhaustive Examples:

- a. connecting a single, independent school directly to the Internet
- b. connecting each school in a small LEA directly to the Internet where the LEA does not required interconnectivity between schools or the aggregation of services at one (1) or more LEA locations
- c. connecting one (1) or more eligible LEA schools/buildings or a group of schools/buildings directly to the Internet in an aggregated/centralized manner whereby the remainder of the eligible locations within that LEA or school cluster are connected to the aggregation point(s) via transport circuits to distribute the Internet to those additional locations.

A.4. Mandatory Service Component. The Contractor shall provide Internet Access service, necessary and appropriate transport service and all equipment necessary to connect one (1) or more eligible locations to the Internet utilizing one of the eligible Category 1 broadband service types capable of delivering a consistent speed between 1.5Mbps and 100Gbps. The service shall be supported by a Service Level / Quality of Service Agreement (SLA/QoS) acceptable to the State and reflecting a minimum service uptime of 99.9% during normal school hours, defined as; 7:00 A.M. to 5:00 P.M. Monday through Friday and 98.7% outside of these hours.

A.5. Data Transmission/Transport Services between eligible locations in a LEA. The Contractor shall provide transport circuits/services for groups of eligible locations to the designated aggregation site(s), a service that interconnects multiple affiliated locations into a secure, physical or virtual private network and connects that private network to the Internet in a manner that enables centralized monitoring and management of the network, configurations and resources. Non-Exhaustive Examples:

- a. All schools and buildings in a LEA are interconnected via a virtual private network (VPN) implemented at the network carrier level and with broadband Internet access enabled for all schools and buildings.
- b. All schools and buildings in a LEA are interconnected via a virtual private network (VPN) implemented at a central office location (non-carrier) and with broadband Internet access enabled for all schools and buildings.
- c. All schools and buildings in a LEA connected via physical data links to a central office location with broadband Internet access enabled to the office and appropriately routed to all schools and buildings.

A.6. Connection and Enablement of the Internet. The Contractor shall provide connection and enablement to the Internet for all schools and eligible locations in a LEA or other group of eligible locations in a private, secure and centrally manageable manner, implemented using:

- a. Physical data links from eligible locations to a hub location that is connected to the Internet, and utilizing an eligible Category 1 broadband service type as appropriate for both the connection to the Internet and data links from eligible locations to the hub location. OR,
- b. An individual Internet connection for each eligible location utilizing one of the eligible Category 1 broadband service types as appropriate for each location and configured into a virtual private network maintained at either the carrier level or within a centralized location. OR,
- c. A hybrid approach to a) and b) above. OR,
- d. An alternate model that clearly demonstrates cost effectiveness, quality of service, and 100% compliance with E-Rate guidelines for Category 1 ESL, excluding dark fiber and self-provisioned network proposals.

A.7. Optional Service Components. If part of the service delivery selected by the LEA, the Contractor shall provide the following services:

- a. For Internet Access delivered via Lit Fiber: Upfront and one-time special construction, installation and upgrades, such as fiber provisioning, tails and termination equipment as need on a location by location basis to implement the Contractor's services to that location in accordance with allowable E-Rate installation services.
- b. DNS, DHCP and other common configurations applicable at the carrier level needed to enable Internet connectivity to the eligible location(s).
- c. Upfront and one-time special construction, installation and upgrades, such as: fiber provisioning, tails and termination equipment as needed on a location by location basis within the LEA or group as needed to implement the respondent's services in that entity, including connection to the Internet and data links between locations, in accordance with allowable E-Rate installation services. NOTE: This service will only be accepted if it is deemed essential to the delivery of the mandatory component of this service offering and all other acceptable transmission options that do not require special construction if available have been proposed for that location.
- d. Configuration of virtual private network software and/or devices located within eligible locations or at carrier locations in accordance with allowable E-Rate service for enablement of service. NOTE: Configuration of data links from locations to a central hub is implicit in option of the mandatory service component of this item.
- e. DNS, DHCP and other common configurations applicable at the carrier level needed to enable Internet connectivity to the private network and interconnected locations.

A.8. Firewall, Advanced Firewall/Security Services, Intrusion Detection and DDos Services. The Contractor shall provide:

- a. Basic rules-based firewall capable of blocking inbound or outbound data packets between the Internet and the eligible location provided as part of the eligible Internet Access service with no separately identifiable cost. If this service is available as part of the Contractor's standard Internet Access service delivery, this shall be indicated in the catalog pricing that qualified Contractors will provide.
- b. Basic rules-based firewall capable of blocking inbound or outbound data packets between the Internet and locations within the private network. If this service is available as part of the Contractor's standard service delivery, please indicate this in the catalog pricing that qualified Contractors will provide.
- c. Advanced Firewall/Security Services, Intrusion Detection and DDos Services provided either in conjunction with an eligible Internet Access service (with a separately identifiable cost) or, as a stand-alone add on service provided to the service recipient.

E-Rate eligibility of the advanced security services described is dependent upon the FCC's adoption of the annual ESL.

A.9. FCC Compliance. The Contractor shall maintain compliance with all FCC rules and USAC procedures with regard to participation in the E-Rate program.

A.10. Mini-Bid Process. The Contractor shall participate in a mini-bid process as described on USAC's website and as described on the State's mini-bid information page (<https://www.tn.gov/education/district-technology/erate.html>) as part of the LEAs FCC Form 471 filing.

- a. Costs submitted during the mini-bid on individual items shall not exceed the costs published in this Contract and included in the accompanying catalog. Published costs will be an upper limit or ceiling. Costs can be submitted during the mini-bid processes that are lower than the published costs.

- b. Contractors may not submit pricing for items or services that are not explicitly contained within the catalog provided upon award of a qualified contract. Contractors found to be in violation of this provision are subject to removal from the list of qualified contractors.
 - c. In accordance with FCC regulations and USAC guidance, cost of the eligible goods/ services will be the most heavily-weighted factor in the mini-bid evaluation matrix.
 - d. Schools and libraries shall develop an evaluation matrix based various criteria other than price alone. The evaluation matrix may include local requirements with the understanding that if a conflict exists between local procurement regulations and USAC guidance, the most restrictive of the regulations prevail.
- A.11. Scope of Work (SOW). The Contractor shall provide a Scope of Work document outlining the costs and procedures to achieve the service/product solution in response to a mini-bid solicitation for a specific facility or group of facilities within a LEA. LEAs may elect to provide services to part or all of their constituent facilities.
- a. The SOW shall clearly identify the total cost for the proposed solution and demonstrate that the overall solution does not exceed the per unit maximum cost presented by the Contractor in the catalog provided by each Contract qualified by this RFQ.
 - b. The SOW shall clearly identify the model (school-owned or leased equipment) that will be used for the solution.
 - c. The SOW will clearly describe all labor and equipment costs required to completely deploy the solution as requested by the school.
 - d. The SOW will clearly describe the escalation procedures to address service issues after deployment including a list of response times for multiple issue severity tiers.
 - e. The SOW will have signatures from both the Contractor and the authorized LEA or library personnel accepting the solution description and timeline for deployment.
- A.12. Lowest Corresponding Price. The Contractor shall comply with the FCC's Lowest Corresponding Price rule and not charge a price above the LCP for E-Rate eligible services. See 47 C.F.R. Section 54.511 and 47 CFS Section 54.500(f). Contractor may refer to USAC guidance additional information
- A.13. Quantity. The Contractor shall allow the LEAs service and service quantity to increase or decrease during the period that the contract is in effect, including voluntary extension periods. While the State anticipates that long term service demands to expand, there may be some situations where buildings close or may need to reduce the quantity of service they receive. The Contractor shall cooperate with the LEA to reduce services in the case of building or school closure.
- A.14. Records Retention. The Contractor shall maintain all records of services provided under the resulting contract for a period of no less than ten (10) years from the last date of service in the fiscal or funding year in which a contract is in place in accordance with FCC rules. This documentation shall be digitally archived and be made available at the request of the State or LEA or other agencies such as auditors, etc.
- A.15. Contractor Standing. The Contractor shall be in good standing with the FCC, have no debts outstanding that are owed to the government and must not be on Red-Light Status. The Contractor must immediately notify the State in any event that the Contractor is notified that it has been assigned Red-Light Status and must take immediate measures to cure its Red Light Status. The Contractor's Red-Light Status may constitute a material breach of contract and the State may

exercise its rights under Section D.6. Termination for Cause. Red-Light Status can be checked via the Red-Light Display System at <https://apps.fcc.gov/cores/userLogin.do>.

- A.16. Contractor Registration. The Contractor shall annually submit to the SLD, a completed Form 473, Service Provider Annual Certification Form, which is a program requirement. The Contractor shall provide a copy of the completed Form 473 to the State upon request.
- A.17. Audit and Review Support. The Contractor shall cooperate with LEA and SLD/USAC during audit exercises by providing documentation about services provided and related invoicing information including details of calculations used to produce said invoices.
- A.18. On-Premise Security. All Contractor personnel assigned to this Contract shall be required to carry company picture ID's while on-site, and on-premise visits must be authorized by site contact person. These steps must be consistent with current security practices and those practices instituted by the LEA to ensure the safety of its students.
- A.19. Provide Catalog. The Contractor shall provide information for the product catalog that contains maximum/ceiling prices for goods/services for which the Contractor is authorized to provide. Updates to the Contractor's catalog may be requested for manufacturer substitutions by emailing Erate.vendor@tnedu.gov to request the substitution. The Contractor shall ensure that any updates to their catalog meet E-Rate eligibility guidelines and verification of eligibility must be included in the request. The state will provide written approval, via email, for all approved substitutions.
- A.20. Contractor Contact Information. The Contractor shall keep all contact information current in order to be notified of additional requirements (as described below). Incorrect contact information will not be considered a valid reason for non-compliance with the stated requirements.
- A.21. Quarterly Sales Reporting. The Contractor shall provide the State quarterly sales reports to Erate.vendor@tnedu.gov and the quarterly reports should align with the State's fiscal year. The reports shall be produced as a csv (or similar) and, at a minimum, include the name and billed entity number of the customer, a detailed list of the service or equipment purchased, and total amount associated with the project.
- A.22. Annual meetings. The Contractor shall be required to attend any program meetings designated by the State as required. The Contractor may attend in-person or virtually. Notification of these meetings will be sent to the contractor's contact on file with the State's contact as noted in Section D.2.
- A.23. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide

the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.24. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on January 15, 2021 ("Effective Date") and ending on January 14, 2026, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed two-hundred and thirty-five thousand dollars (\$235,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Compensation Firm.** The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
See Attachment B for catalog	

- C.4. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have

been provided to the following address:

Steven Sanders
 Director, District Technology
 Andrew Johnson Towers, 10th Floor
 710 James Robertson Parkway
 Nashville, TN 37243
Steven.Sanders@tn.gov

The address above pertains to purchases by State. All other invoices shall be sent to the purchasing LEA.

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Tennessee Department of Education, Office of State Technology
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.

- b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.

- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Steven Sanders
 Director, State Technology
 Andrew Johnson Towers, 10th Floor
 710 James Robertson Parkway
 Nashville, TN 37243
Steven.Sanders@tn.gov
 Telephone # 615-693-0207

The Contractor:

Mark Sunderhaus
 Education Networks of America Inc.
 Senior Manager of Customer Services
 Phone: (615) 312-6188

E-mail: msunderhaus@ena.com

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the

Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, pandemics, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties'

agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A and B;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor

shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.3. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.4. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.5. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

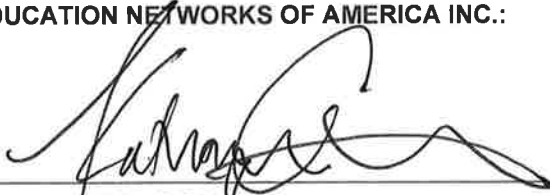
Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

- E.6. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement resulting from the services. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give

notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

IN WITNESS WHEREOF,

EDUCATION NETWORKS OF AMERICA INC.:



12.10.2020

CONTRACTOR SIGNATURE

DATE

Kitty Ganier, General Counsel

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

COMMISSIONER, PENNY SCHWINN

DATE

ATTACHMENT A*(Fill out only by selected Contractor)***ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	68881
CONTRACTOR LEGAL ENTITY NAME:	Education Networks of America Inc.
EDISON SUPPLIER IDENTIFICATION NUMBER	0000083569

The Contractor, identified above, does hereby attest, certify, warrant, and assure that Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.


CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind Contractor.

Kathryn Ganiver General Counsel

PRINTED NAME AND TITLE OF SIGNATORY

12.10.2020

DATE OF ATTESTATION

Contractor Catalog ATTACHMENT B

Please see attachment.

Agenda Item Title: Approval of Subrecipient Agreement and One-Time Distribution of Funds Resolution from the American Rescue Plan Act (ARPA) fund

Board Meeting Date: February 13, 2024

Department: Federal Programs

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

MCS initially received a \$500,000 award from ARPA as a subrecipient through the City of Murfreesboro to fund tutors in response to COVID related learning loss. Additional funds in the amount of \$156,000 have become available as one-time funding. This additional funding will require a resolution and one-time funding subrecipient agreement between the City of Murfreesboro and Murfreesboro City Schools. These funds will be used to fund tutoring programming during the fall semester of the 2024-2025 school year.

Staff Recommendation

Approval of the Subrecipient Agreement and One-Time Distribution of Funds Resolution from the American Rescue Plan Act (ARPA) fund

Fiscal Impact

Allocation of \$156,000 in ARPA funds which will be shown as revenue in the FY25 budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

**SUBRECIPIENT GRANT AGREEMENT
BETWEEN
THE CITY OF MURFREESBORO
AND
MURFREESBORO CITY SCHOOLS
FOR
TN ALL CORPS TUTORING**
funded through the
AMERICAN RESCUE PLAN ACT (ARPA)
(CFDA 21.027)
For a Federal Award of \$156,000
Performance Period: July 1, 2024-January 31, 2025

Amount of federal funds obligated by this action: \$156,000
Total amount of federal funds obligated to this subrecipient: \$156,000
Total amount of the federal award committed to this subrecipient by the pass-through entity: \$656,000

Jennifer Brown, Finance Director and City Recorder/Treasurer
Finance & Tax Department 111 W. Vine St.
First Floor Murfreesboro, TN 37130
Phone 615-893-5210
jbrown@murfreesborotn.gov

Federal award date:

Date agreement fully executed:

**PART A
AGREEMENT**

THIS AGREEMENT (hereinafter the "Agreement") entered into this _____ day of _____, 2024 and dated to be effective _____, by and between the City of Murfreesboro, a municipal corporation of the State of Tennessee (the "City") and Murfreesboro City Schools, a local education agency of the State of Tennessee (the "Subrecipient"), located at 2552 South Church Street, Murfreesboro, TN 37127.

WITNESSETH THAT:

WHEREAS, the City of Murfreesboro has entered into a funding agreement with the U.S. Department of Treasury (the "Treasury") for the execution of projects and activities under the American Rescue Plan Act ("ARPA") of 2021, Public Law 117-2 and its implementing regulations, 31 CFR Part 35; and

WHEREAS, the funding agreement between the City and the Treasury provides for the implementation of a Strategic Partnership with Murfreesboro City Schools for tutoring to assist in minimizing academic gaps associated with COVID learning loss; and

WHEREAS, the Department of Treasury has authority as the federal agency overseeing and providing guidance for the City as grantee of ARPA funds to request information and monitor the Subrecipient; and

WHEREAS, the cooperation of the City and the Subrecipient is essential for the successful local implementation of projects under the ARPA program; and

WHEREAS, the City of Murfreesboro has identified an additional \$156,000.00 in ARPA funds to allocate to Subrecipient to provide for ongoing implementation of a tutoring program funded under the 2022 Subrecipient Grant Agreement; and

WHEREAS, the City of Murfreesboro and Murfreesboro City Schools seek to continue to financially support the ongoing tutoring program through allocation of additional available funds; and

NOW, THEREFORE, the parties hereto do mutually agree that this Agreement is entered into predicated upon the following terms and/or conditions, all and every one of which the parties hereto agree to observe and perform:

I. SCOPE OF SERVICES

1. **Scope of Services:** Subrecipient is a pre-kindergarten through sixth-grade municipal public-school system, also referred to as a "local education agency" established pursuant to T.C.A. §49-2-401 et. seq., Murfreesboro City Charter §92, and Murfreesboro City Code, Chapter 25. The Murfreesboro City School System consists of thirteen (13) schools and educates approximately 9,450 students.

Between 2022 and 2024, Murfreesboro City Schools has implemented a TN ALL Corps tutoring program and has seen positive outcomes in student achievement. Continued funding of this program allows continuation of additional low-ratio, high-dosage tutoring to be provided to students. The services provided by Subrecipient pursuant to this Agreement are hereinafter collectively referred to as the "Program" and are defined in further detail in Part C through E.

The Program funded by this Agreement will be assigned to fund the salaries of Educational Assistants who will be responsible for small group tutoring sessions. These tutoring sessions will be in person, last between 30-45 minutes, and occur 2-3 times per week. Students must remain in tutoring for at least one calendar year and focus on one content area per semester. The tutoring will use high-quality materials that are aligned with classroom content so that classroom instruction is reinforced and enhanced. Tutoring is free for all participating students and targeted toward schools with the highest poverty levels (Title Schools) and schools that have the highest subgroup deficits.

All students who participate in the tutoring program will be required to complete a placement assessment and to complete progress monitoring for the duration of their tutoring support. This will be done through the online assessment component of the free math and reading online resource program.

The Subrecipient, assuming responsibility for the implementation of the actual operation of the Program herein specified, shall perform services in a satisfactory and proper manner as determined by the City and as outlined per Part C.

2. **Revision of Scope:** The performance criteria, objectives and budget items in Part C through E may be modified, revised, or amended upon the joint written consent of the parties. The Subrecipient may request a budget revision, not to exceed the total award in this agreement, at any time throughout the duration of this Agreement. However, prior to any purchases under the new budget, the City must approve the revision in writing and the revision must not substantially change the scope or outcomes of the Program. Approval may be in the form of a letter, a fax, or an email.

II. COMMENCEMENT AND COMPLETION

1. **Commencement and Time of Performance:** The Agreement shall become effective upon the execution and delivery hereof by the Parties and continue until January 31, 2025. Notwithstanding other provisions of this Agreement, this Agreement will remain in effect until the City determines that the Subrecipient has completed all applicable administrative actions, reporting requirements, and all Program work required by and set forth in this Agreement. Should Subrecipient require additional time for auditing of or reporting from the Program in accordance with ARPA, this Agreement shall be deemed automatically extended until such time as said audit and reporting shall be completed.

2. **Agreement Completion Date:** Unless an extension has been approved by the City in advance, OR unless this Agreement is terminated earlier in accordance with other provisions herein, this agreement will end on December 31, 2024, except that Subrecipient shall complete such close-out requirements no later than

the date dictated by Section 3.8 below.

III. COMPENSATION AND USE OF FUNDS

1. **Regulation for Use of Funds:** The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the American Rescue Plan Act (ARPA), 31 CFR Part 35; other regulations governing the use of these funds; and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. It is the Subrecipient's responsibility to read, understand, and comply with these regulations.

2. **Uniform Grant Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards:** During the administration of this Agreement, the Subrecipient shall comply with, and adhere to 2 CFR Part 200.

3. **Total Payments:** Total amount of funds provided by the City to the Subrecipient under this Agreement shall not exceed \$156,000. At the sole discretion of the City, any unexpended funds as of November 30, 2024, may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City. All expenditures associated with implementation of this Project must be expended or encumbered by November 30, 2024; and submitted for reimbursement by January 31, 2025, unless a written extension request is received and approved by the City prior to November 30, 2024.

4. **Vendor Registration:** The Subrecipient must complete the necessary paperwork to become a vendor of the City of Murfreesboro before any payment can be made. This includes providing the Subrecipient's current W-9, and City staff verifying the Subrecipient's taxpayer ID with the IRS. The address on the Vendor Registration form must correspond with the address on the invoice requesting reimbursement. If there are any changes, a new Vendor Registration form must be completed.

5. **Reimbursement Requests:** This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs of this Project, as described in Part C through E, and for which the Subrecipient has made payment during the period of performance as set forth in Section 2.1 above.

The City agrees to reimburse the Subrecipient for such costs, and payment shall be made upon the receipt of a request for reimbursement form, using the template provided in Part G, so long as the Subrecipient is current on all performance and financial reporting and has provided the necessary response and/or support for any other request, if any, that has been made by the City of Murfreesboro in regards to this Agreement. The City will reimburse all approved reimbursements requests within 30 days of the request. The request must include all of the necessary documentation and any questions must be sufficiently answered as determined by the City of Murfreesboro.

All requests for reimbursement must be further accompanied by an invoice which identifies the address to which the payment should be remitted and supporting

documentation substantiating the payment of the eligible expenses being requested for reimbursement. Such supporting documentation shall include, but is not limited to, an agency payment voucher; a copy of the signed check with which the payment was made; any invoices, receipts and/or bills from vendors; and any relevant time sheets and related payroll reports. The Subrecipient shall also submit the Duplication of Benefits Certification, Part H, as required by Section 3.6 below. The City reserves the right to request further supporting documentation as necessary to ensure compliance with ARPA, its implementing regulations and 2 CFR Part 200.

6. **Double Reimbursement:** The Subrecipient must not claim reimbursement from the City under this Agreement for any portion of its obligations that has been paid by another source of revenue. A Duplication of Benefits (hereinafter "DOB") occurs when any subrecipient receives funding assistance from multiple sources of funding for the same expenses. Federal law prohibits agencies administering federal funds from providing assistance to any person, business concern, or other entity for any part of such loss as to which they have received financial assistance under any other program or from insurance or any other source. If the City determines that a DOB has occurred, the funds that are in excess of the need and duplicated by other assistance received by the beneficiary for the same purpose must be recaptured. The Subrecipient must submit the Duplication of Benefits Certification, Part H, with the Requests for Reimbursement.

7. **Restriction on Disbursements:** ARPA funds shall not be disbursed to Subrecipient except pursuant to the conditions of this Agreement. Disbursements may be suspended or terminated under this Agreement upon refusal to accept any additional conditions that may be imposed by the City at any time or if the ARPA funds granted to the City of Murfreesboro are suspended or terminated.

8. **Withholding Payments:** All payments to the Subrecipient are subject to the Subrecipient's compliance with this Agreement. Any breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve the Agreement non-compliance.

9. **Close-out Reimbursement:** Close-out requests for reimbursement must be submitted by December 31, 2024. If not submitted, the unexpended funds under this Agreement shall revert to the City of Murfreesboro.

10. **Compliance with applicable laws:** The Subrecipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and the Subrecipient shall provide for compliance with the ARPA, any implementing regulations, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds, pursuant to 31 CFR § 35.9 and 2 CFR Part 200.

IV. USE AND DISPOSITION OF PROPERTY

1. **Disposition of Expendable/Non-Expendable Real and Personal Property:** The Subrecipient agrees to follow 2 CFR § 200.311 through 200.315 in regards to all real and personal property purchased in whole or in part with funds pursuant to this Agreement. These sections of 2 CFR Part 200, Subpart D govern the title, use, management, and disposition of real and personal property, which

includes but is not limited to the following:

- a. **Management requirements:** The Subrecipient must have procedures in place for managing real property and equipment, whether acquired in whole or in part under a Federal award, until disposition takes place. These procedures at a minimum, must meet the following requirements:
 - i. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property;
 - ii. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years;
 - iii. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated;
 - iv. Adequate maintenance procedures must be developed to keep the property in good condition; and
 - v. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- b. **Disposition:** Barring any changes in regulations for ARPA funds by the Treasury, the Subrecipient must obtain written authorization from the City before disposing of an item of real or personal property with an original cost exceeding \$1,000 (City's threshold) that was purchased with funds disbursed under this Agreement. All proceeds from the sale of real or personal property purchased with any funds disbursed under this Agreement must be returned to the City within 30 days of the receipt and must include a notation of what grant the funds were received under. The Subrecipient agrees the City may file the appropriate legal instrument(s) necessary to protect the City's financial interest and that the City has not waived any rights pertaining to property purchased with funds under this Agreement. The City will then be responsible for returning the funds to the appropriate Federal agency or using them for a purpose in accordance with Federal regulations.

V. ASSIGNMENTS

1. **Assignability:** Neither the City nor the Subrecipient shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.
2. **Subcontracting/Third Party Contracts:** The Subrecipient agrees to furnish the City with a copy of any and all third-party contracts that it executes in

the performance of the work to be undertaken within the scope of this Agreement.

The Subrecipient agrees to incorporate or cause to be incorporated in all third-party contracts or subcontracts funded under the ARPA program provisions requiring all applicable Federal, State, and local laws, rules, and regulations to be adhered to in accordance with all parts of this Agreement. Specifically, the Subrecipient agrees to require and monitor compliance by all contractors, subcontractors, and other third parties. Any third-party contract that is not in accordance with the outlined budget in this Agreement will be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Subrecipient.

VI. AUDITS AND INSPECTIONS

1. **Audits and Inspections:** The Subrecipient must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Finance & Tax Department of the City of Murfreesboro. Subrecipient personnel will make available to City staff and any other auditor authorized by the City, all program and accounting records and financial statements needed to meet the requirements of 2 CFR § 200.300 through 200.309 and Subpart F. If any portion of the funds approved by this Agreement is subcontracted to other organizations for the delivery of objectives and criteria, the Subrecipient will ensure that the fiscal and performance records of the subcontractor will be available for inspection by Finance Department personnel or duly authorized auditors; by including appropriate clauses in all of its subcontracts.

Subrecipients that expend \$750,000 or more during the Subrecipient's fiscal year in Federal awards, including funds disbursed under this agreement, must have a single audit conducted for that year in accordance with the provisions of 2 CFR Part 200, Subpart F. Single audit requirements will remain in effect until all sub-award funds are expended and audited.

Any Subrecipient receiving less than \$750,000 in Federal funding shall not be required by the City to undergo an annual independent single audit of the ARPA expenditures under this Agreement; however, records must be available for review or audit by the appropriate officials of the Federal agency, the City as the pass-through entity, and the Government Accountability Office. Furthermore, no expenditures with respect to any such audit undertaken by the Subrecipient of its own initiative shall be chargeable to the funds under this Agreement. All audit reports are to be completed within six months of the Subrecipient's fiscal year end and the completed audit report must be submitted to the City within 60 days of issuance. Before the due date, the Subrecipient should submit to the City either (a) an audit report or (b) a letter giving the reason for non-compliance with the due date and requesting an extension of time with a specific date the report will be submitted. In event of the latter, the City will respond in writing to the Subrecipient to approve or disapprove the request. If audit findings are included in the audit report, Subrecipient must submit a corrective plan to the Grantee addressing audit findings to accompany the audit report. The corrective plan submitted to the Grantee shall include the action to be taken with an anticipated completion date for

findings to be corrected. If the Subrecipient disagrees with the finding(s), then an explanation summarizing specific reasons for the disagreement shall be submitted to the Grantee.

VII. SUBRECIPIENT RESPONSIBILITIES

1. **Compliance with Laws:** All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Tennessee and local governments. Further, the Subrecipient agrees to perform services pursuant to the provisions of this Agreement and Federal and City regulations, rules and policies and special assurances included therein. The Subrecipient further agrees to comply with the requirements of ARPA, 31 CFR Part 35, 2 CFR Part 200, other regulations governing the use of funds disbursed under this Agreement, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement.

2. **Non-Municipal Personnel and Services:** All services required herein will be performed by the Subrecipient under the direction of its Board of Education or other governing body. Any services outside the Scope of Services which the Subrecipient deems necessary to assign to a subcontractor, must first have written approval from the City.

VIII. DOCUMENTATION AND RECORD KEEPING

1. **Establishment and Maintenance of Records:** The Subrecipient shall establish and maintain records of all actions, and accurate books of accounts for all funds received and disbursed with full documentation to substantiate each transaction. If the Subrecipient should go out of existence, custody of the records with respect to all matters covered by this Agreement shall be assigned and transferred to the City.

2. **Record Requirements:** The Subrecipient shall maintain all records required by the Federal regulations specified in 2 CFR Part 200, Subpart D, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the four categories of ARPA;
- c. Records required to determine the eligibility of activities;
- d. Records which demonstrate compliance with the requirements in 2 CFR § 200.311 regarding any change of use of real property acquired or improved with ARPA assistance;
- e. Financial records that document all transactions and that can be properly documented and audited;
- f. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documents;

- g. Copies of all third party or subcontracts; and
- h. Detailed records on the Subrecipient's organization, financial and administrative systems, and the specific ARPA-funded project(s) or activities.

Please note that the above descriptions are brief and provide only a summary of the records the Subrecipient is required to maintain. The Subrecipient must consult 2 CFR Part 200, Subpart D for a detailed description of the required records.

3. **Retention of and Access to Records:** In accordance with 2 CFR § 200.334 through 200.338, the Subrecipient must retain all financial records, supporting documents, statistical records, and all other records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by Treasury for a period of three years from the date of submission of the final expenditure report to the City of Murfreesboro. Records for real property and equipment acquired with funds under this Agreement shall be retained for three years after final disposition. If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

The Subrecipient agrees that the City, Treasury, Inspectors General, and the Comptroller General of the United States, or any of their authorized representatives has access to and the right to examine all documents, papers, or other records which are pertinent to this Agreement, in order to make examinations, excerpts and transcripts. The right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. The City reserves the right, on demand and without notice, to review all of the Subrecipient's files associated with this Agreement. The same right to review will be imposed upon any third party or subcontractor of the Subrecipient; therefore, it is the Subrecipient's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City and/or the Treasury to ensure compliance with this Agreement and with all local, state, and Federal regulations.

4. **Documentation of Costs:** All costs must be supported by proper documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

5. **Inventory Management:** The Subrecipient must submit an annual statement identifying the status of all equipment and non-real property items purchased with ARPA funds through the Agreement termination date. The status report should inventory all equipment and non-real properties purchased with ARPA funds and state the condition of the equipment and its location.

IX. PROCUREMENT

1. **Procurement Methods:** The Subrecipient must have and use documented procurement procedures, consistent with Federal, State, local, and tribal laws and

regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. Additionally, the Subrecipient's documented procurement procedures must conform to the procurement standards identified in 2 CFR § 200.318 through 200.327, including but not limited to the following. If the Subrecipient does not have documented procurement procedures, they must follow the City's procurement policy.

- a. Maintaining a code or standard of conduct governing the performance of the Subrecipient's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.
- b. All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards in 2 CFR § 200.319 through 200.320. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchases as defined in 2 CFR § 200.320 and 48 CFR Part 2, Subpart 2.1.
- c. Invitations for bids shall be based on specifications developed by the Subrecipient. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.
- d. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.
- e. The Subrecipient agrees to purchase services, goods, and materials on an "as needed basis" and at the "lowest price obtainable".
- f. The Subrecipient will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will also be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

X. SUBRECIPIENT - CONTRACT PROVISIONS

1. **Contract Provisions for Non-Federal Entities Under Federal Awards:**
The Subrecipient must also make sure that any contracts related to the Program in this Agreement must contain the following provisions:
 - a. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - b. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non- Federal entity including the manner by which it will be affected and the basis for settlement.

- c. Equal Employment Opportunity: Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- d. Davis-Bacon Act: The Davis-Bacon Act (40U.S.C.3141-3148) requirements do not apply to projects funded solely with awards funds from the Coronavirus State and Local Fiscal Recovery Funds (hereinafter referred to as "CSFRF/CLFRF ARPA") program, except funded construction projects undertaken by the District of Columbia. Recipients may otherwise be subject to the requirements of Davis-Bacon Act, when CSFRF/CLFRF ARPA award funds are used on a construction project in conjunction with funds from another federal program that requires the enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing- wage-in-construction laws (commonly known as "baby Davis-Bacon Acts") may apply to projects. Please refer to FAQ 4.10 concerning projects funded with both CSFRF/CLFRF ARPA funds and other sources of funding.

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40U.S.C. 3141- 3144, and 3146-3148) as supplemented by Department of Labor regulations (29CFR Part 5,"Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti- Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal

awarding agency.

- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708): Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- f. Rights to Inventions made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- g. Clean Air Act (42 U.S.C. 7401-76719) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended: Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-76719) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible

under statutory or regulatory authority other than Executive Order 12549.

- i. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- j. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment: Contract must comply with 2 CFR § 200.216.
- k. Domestic Preference for Procurement: Contract must comply with 2 CFR § 200.322. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purpose of this section:
 - i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- l. Procurement of Recovered Materials: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in

the EPA guidelines.

XI. PERFORMANCE AND FINANCIAL REPORTING

1. **Performance and Financial Monitoring and Reporting:** The Subrecipient must comply with 2 CFR § 200.328 through 200.330, 31 CFR Part 35, and all performance and financial monitoring and reporting requirements outlined in this agreement.

The Subrecipient is required to submit the performance and financial reports as specified and in accordance with the reporting schedule in Part E and F. The Subrecipient is also required to provide other information and data, as deemed necessary by the City, to meet its reporting requirements to the U.S. Department of Treasury and in accordance with ARPA reporting requirements. Any delinquent or incomplete performance and/or financial reports must be received before the City can honor any reimbursement requests for funds. As stated in Section 13.2, sanctions will be imposed upon the Subrecipient for failure to satisfy report due dates. Incidents of nonperformance will suspend grant operations until corrective measures are implemented. If the grant is conditioned, access to grant funds will be suspended pending a satisfactory cure to the related incident of nonperformance.

With reasonable notice being given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement to satisfy compliance with any requirement of this Agreement.

XII. PROGRAM MONITORING

1. **General:** City staff will evaluate progress based on the objectives, criteria, work schedule and budget in Parts C through E, to determine if it is consistent with the initial purpose of the project and in compliance with ARPA and its implementing regulations. All data necessary to review and monitor project progress as determined by the City will be made available to City personnel or an auditor as designated by the City to oversee compliance monitoring (hereinafter the "Auditor"). This includes, but is not limited to, performance records and interviews with the Subrecipient staff, as required by the City.

City personnel or the designated Auditor will also make field inspections at the office/job site(s), as necessary, including but not limited to the following:

- a. The Subrecipient fails to take recommended corrective action;
- b. Projects are at high risk of error for activities that serve large number of people;
- c. Projects are at high risk based on the amount of funds involved.

2. **Financial Monitoring:** City staff shall monitor, review, and evaluate the financial procedures of the Subrecipient through documents and financial reports submitted to the City and on-site monitoring in accordance with Part F. The Subrecipient shall provide and make available to the City such reports and records that will be necessary for a proper financial evaluation. With reasonable notice

being given to the Subrecipient, the City may schedule on-site visits as authorized in Section 11.1 above.

3. **Programmatic Monitoring:** City staff shall monitor, review, and evaluate the Subrecipient. Performance reports will be reviewed and evaluated in accordance with Part E. With reasonable notice being given to the Subrecipient, the City may schedule on-site visits as authorized in Section 11.1 above. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, data, and information as may be necessary. The Subrecipient shall at any time and as often as the City or the Treasury may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

4. **Projects Involving Construction or Renovation:** For all projects requiring building construction or renovation, the construction/renovation must comply with the City building code and all zoning regulations. Additionally, for construction/renovation projects, including façade improvements, a City official will complete a site inspection prior to reimbursements to ensure that materials for which a reimbursement is requested are in place on the building. Reimbursements for construction/building materials and façade improvements will only be made once the materials are in place.

5. **Risk Assessment, Specific Conditions and Remedies:** The City will conduct a risk assessment as required by §200.332(b) and determine the Subrecipient's level of risk as low, moderate, or high. Risk assessments may be repeated throughout the project period after unanticipated issues or other adverse circumstances that may arise.

6. In the event of noncompliance or failure to perform, the City has the authority to apply remedies, as defined in the uniform guidance (§200.339), including but not limited to: temporarily withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by the subrecipient, debarment or other remedies including civil and/or criminal penalties, as appropriate (§200.332(h)).

7. The City will also consider whether the monitoring results of Subrecipient necessitate adjustments to its own record (see §200.332(9)).

8. **Monitoring Letters and Reports:** Written reports of the City's monitoring findings will be provided to the Subrecipient within 30 days of an official monitoring visit. Such reports will note outstanding performance as well as findings or concerns and recommendations for improvement.

9. **Subrecipient Response:** The Subrecipient shall have 30 days from the receipt of a financial or programmatic monitoring visit letter to address any findings or concerns.

XIII. TERMINATION, SANCTIONS AND CLOSEOUTS

1. **Termination:** In the event that the Subrecipient fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action in accordance with 2 CFR § 200.339

through 200.343. The City may also terminate this Agreement for convenience.

Furthermore, funding to be made available by the City under this Agreement has been approved by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

In the event of termination of this Agreement by the City, when termination is due to Subrecipient noncompliance as set forth above, the Subrecipient shall forfeit to the City all unexpended monies provided under the Agreement. At the City's discretion, the Subrecipient may also be required to refund all funds awarded during the period of this Agreement that have already been spent by the Subrecipient and reimbursed by the City.

Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:

- a. Reasonable description of the default/reason for termination;
- b. Demand for a cure; and
- c. Statement of reasonable time within which a cure must be effected. Such reasonable time will be presumed to be not less than five, nor more than fifteen, business days. Such times shall be measured from the actual receipt of said notice.

If the Subrecipient cures the default within the reasonable period of time set forth in the notice, or as otherwise agreed between the parties, the City shall not terminate the Agreement and the written notice of proposed termination shall be deemed revoked, null and void.

2. **Imposition of Sanctions:** The City reserves the right to impose sanctions on the Subrecipient for the violation of any terms of this Agreement, failure to comply with any terms of this Agreement, or failure to undertake the project in a timely manner. Sanctions may include, but are not necessarily limited to, suspension of the grant operations until corrective measures are implemented, withholding any and all project funds, termination of the Agreement, requiring the Subrecipient to return funds already received, or barring the Subrecipient from future funding. No sanction may be imposed pursuant to this paragraph unless the City complies with requirements of Section 13.1 and the Subrecipient fails to cure the alleged default within the reasonable period of time provided for in the notice or as otherwise agreed between the parties.

3. **Closeout:** The Subrecipient's obligation to the City shall not end until all closeout requirements are completed in accordance with 2 CFR § 200.344. Activities during the close-out period shall include, but are not limited to, submitting final reimbursement request and final activity/progress report to the City, account for any real or personal property acquired with federal funds, and determining the custodianship of records. Grant closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Subrecipient.

4. **Post-Closeout Adjustments and Continuing Responsibilities:** The Subrecipient acknowledges the provisions of 2 CFR § 200.345 in regards to post-closeout adjustments and continuing responsibilities in relation to the U.S. Department of Treasury and the City of Murfreesboro.

XIV. TAXES

1. **Payment of Taxes:** The City shall not be liable for the payment of any taxes levied by the City, State, or Federal Governments against the Subrecipient, and all such taxes shall be paid by Subrecipient; however, should the City nevertheless pay any such taxes, the Subrecipient shall immediately reimburse the City.

XV. LAWS, REGULATIONS AND SPECIAL CONDITIONS

1. The information in this Agreement is included for the convenience of the Subrecipient and to inform the Subrecipient of the diverse statutory and regulatory requirements to which the acceptance of funds makes them subject. For the actual regulatory or statutory requirements, the Subrecipient should consult the actual laws, regulations, and documents referenced in this Agreement. In addition to the other requirements set forth herein, the Subrecipient shall likewise comply with the applicable provisions of 31 CFR Part 35, in accordance with the type of project assisted. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Subrecipient.

2. **Debarment and Suspension:** In accordance with 2 CFR § 180.220, the Subrecipient shall not employ or otherwise engage any debarred, suspended, or ineligible contractors or subcontractors to conduct any activities under this Agreement. The Subrecipient will consult appropriate references, including but not limited to the Excluded Parties Listing System website at <https://sam.gov/>, to ascertain the status of any third parties prior to engaging their services. The Subrecipient will submit to the City the names of contractors and subcontractors selected under this Agreement, including a certification by the Subrecipient that it has determined that none of these entities are presently debarred, suspended, or ineligible. The following link will provide information on how to look up suspended and debarred companies on sam.gov: www.dol.gov/agencies/ofccp/debarred-list.

3. **Emerging Business Enterprises:** If a Subrecipient solicits or requests an invitation for bids, every effort feasible will be made to contact emerging, minority-owned, and women-owned business enterprises for a response to the solicitation or invitation for bidders. If utilizing a minority subcontractor, the Subrecipient shall summarize what portion of the project the minority subcontractor handled. At the end of the project, the Subrecipient shall submit a summary of all payments made to the minority subcontractor(s). The Subrecipient shall submit all necessary forms with quarterly reports to assure compliance with this requirement.

4. **Building and Zoning Regulations and Permits:** The Subrecipient agrees to comply with Federal, State and local laws. In particular, the Subrecipient shall comply with all applicable building and zoning regulations. In addition, the Subrecipient shall obtain all necessary permits for intended improvements or building activities.

5. **Section 504 - Persons with Disabilities:** The Subrecipient, in the implementation of projects funded by this Agreement and in all of its other operations, will comply with all requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (and the implementing regulations at 24 CFR Part 8), the Americans with Disabilities Act of 1990 (PL 101-336), and all state and local laws requiring physical and program accessibility to people with disabilities, and agrees to defend, hold harmless, and indemnify the City from and against any and all liability for any noncompliance on the part of the Subrecipient.

6. **Discrimination Prohibited:** No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any project or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "project or activity" is defined as any function conducted by an identifiable administrative unit of the Subrecipient receiving funds pursuant to this contract. The Subrecipient further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in Part B.

7. **Nepotism:** No person shall be employed or contracted with if a member of his or her immediate family is on the Board of Directors of the Subrecipient or is employed in an administrative capacity by the Subrecipient. For the purposes of this section: "immediate family" includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild and "administrative capacity" includes those who have selection, hiring, supervisory or operational responsibility for the project.

8. **Conflict of Interest:** The Subrecipient hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, in accordance with 2 CFR § 200.318(c), no employee, officer, or agent of the Subrecipient who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the project assisted under this Agreement.

9. **Political Activity Prohibited:** None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S Code (USC).

10. **Lobbying Prohibited:** None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Tennessee. The Subrecipient shall assure compliance

with the regulations at 2 CFR § 200.450 by submitting, and requiring all applicable subcontractors to submit, a certification of compliance with this provision. The Subrecipient certifies to the best of its knowledge and belief that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

XVI. MISCELLANEOUS CLAUSES AND NOTICES

1. **Terms Herein Controlling Provisions:** The terms of this Agreement shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Tennessee. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Rutherford County, Tennessee.

3. **Disclaimer of Liability:** City shall not hold harmless or indemnify Subrecipient beyond that liability incurred under the Tennessee Governmental Tort Liability Act (T.C.A. §29-20-101 et seq.).

4. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

5. **Arbitration, Damages, Jury Trial and Warranties:** The Subrecipient and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void. The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement.

The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Subrecipient waives its right to a jury trial to resolve any disputes that may arise hereunder.

No provision of any document within the Agreement between the Parties will be

given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

6. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-101 *et seq.*), Subrecipient shall bear the risk of any loss or damage to any personal property to which Subrecipient holds title.

7. **Findings Confidential:** Except as provided by law, all reports, information, data, and documentation prepared or assessed by the City or the Subrecipient under this Agreement are confidential. The Subrecipient agrees that the reports shall not be made available to any individual or organization without the prior written approval of the City.

Subrecipient may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Subrecipient must comply with all the requirements of Tennessee Public Records Act (T.C.A. § 10-7-503, *et seq.*) in providing services and/or goods under this Agreement. Subrecipient shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Subrecipient must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Subrecipient. Upon the termination or expiration of this Agreement, Subrecipient shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Tennessee Public Records Act and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

8. **Dissemination of Information:** The Subrecipient, at such times and in such forms as the Treasury and/or the City may require, shall furnish to the Treasury and/or the City, such statements, records, reports, data and information the Treasury and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Subrecipient under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in the Tennessee Public Records Act (T.C.A. § 10-7-503 *et seq.*).

9. **Identification of Documents and Projects:** All projects, reports, maps, news releases and/or other documents undertaken as part of this Agreement, other than documents exclusively for internal use with City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "City of Murfreesboro", then name of the Subrecipient, and, in the case of written material, the month and year of preparation and the following information regarding Federal

assistance: "The funding of this project, report, map, document, etc., was financed (in whole or in part) through a grant of ARPA funds from the U.S. Department of Treasury and the City of Wichita."

10. Training Required: It shall be the responsibility of the Subrecipient to participate in all appropriate training conducted by the Treasury or as required by the City.

11. Copyrights: If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to Treasury regulations. The Treasury and the City reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

12. Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to the Treasury and the City for determination by the Treasury and the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to the Treasury regulations.

13. Anti-Trust Litigation: For good cause, and as consideration for executing this contract, the Subrecipient, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Tennessee, relating to the particular product, products, or services purchased or acquired by the Subrecipient pursuant to this contract.

14. Compliance with Law: Subrecipient shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

15. Third Party Exclusion: This Agreement is intended solely for the benefit of City and Subrecipient and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.

16. Independent Contractor: The parties agree that the relationship between the Subrecipient and the City shall be that of an independent contractor. No employee or agent of the Subrecipient shall be considered an employee of the City and this Agreement in no manner shall be construed to be that of a partnership between the parties. Given this independent contractor relationship, the parties further agree:

- a. Subrecipient is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contactor may only receive such coverages if provided by Subrecipient or an entity other than City. Subject to the foregoing, Subrecipient hereby

waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Subrecipient's operations or the performance of services by Subrecipient hereunder.

- b. The parties hereby acknowledge and agree that City will not: (a) require Subrecipient to work exclusively for City; (b) establish means or methods of work for Subrecipient, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes; (c) pay to Subrecipient a salary or hourly rate, but rather will pay to Subrecipient a fixed or contract rate; (d) provide training for Subrecipient on performance of the services to be done; City may provide informational briefing on known conditions; (e) provide tools or benefits to Subrecipient (materials and equipment may be supplied if negotiated); (D dictate the time of Subrecipient's performance; and (g) pay Subrecipient personally; instead, City will make all checks payable to the trade or business name under which Subrecipient does business.
- c. Subrecipient does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
- d. Unless given express written consent by City, Subrecipient agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the Program site.
- e. If Subrecipient is given written permission to have other parties on the site, and Subrecipient engages any other party which may be deemed to be an employee of Subrecipient, Subrecipient will be required to provide the appropriate workers' compensation insurance coverage as required by operation of law or other agreement.
- f. Subrecipient has and hereby retains control of and supervision over the performance of Subrecipient's obligations hereunder. Subrecipient agrees to retain control over any allowed parties employed or contracted by Subrecipient for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Subrecipient.
- g. Subrecipient represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
- h. All services are to be performed solely at the risk of Subrecipient and Subrecipient shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub- subcontractors, vendors, along with members of the general public it encounters while performing the work.
- i. Subrecipient will not combine its business operations in any way with

City's business operations and each party shall maintain their operations as separate and distinct.

XVII. APPENDICES

All Appendices, as listed below and referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

- Part A - Agreement
- Part B - Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements
- Part C - Subrecipient Information, Project Scope, and Timeline
- Part D - Project Budget
- Part E - Performance Measures and Reporting
- Part F - Financial Reporting
- Part G - Reimbursement Request Form
- Part H - Duplication of Benefits Certification

XVIII. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Subrecipient, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Subrecipient and to bind the Subrecipient to this Agreement, and further that said Subrecipient has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

SUBRECIPIENT

CITY OF MURFREESBORO

Bobby N. Duke, III
Director of Schools

Shane McFarland
Mayor

Date: _____

Date: _____

APPROVED AS TO FORM:

Adam F. Tucker, City Attorney

PART B
REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT
OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS
STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination - Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its departments, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Subrecipient shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

C. In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments.

D. CIVIL RIGHTS REQUIREMENTS.

- a. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 12132, Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.
- b. Equal Employment Opportunity. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC

§2000e, Subrecipient shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the awarded Agreement. Subrecipient shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment; upgrading demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- c. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Subrecipient shall refrain from discrimination against present and prospective employees for reason of age.
- d. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Subrecipient shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

E. If Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-recipients and contractors also comply with Title VI and other applicable authorities covered in this document.

PART C
SUBRECIPIENT INFORMATION, PROJECT SCOPE, AND TIMELINE

I. SUBRECIPIENT INFORMATION

Subrecipient: Murfreesboro City Schools
SAM UEI: D23MHJLC9TJ9
Grant & CFDA: American Rescue Plan Act (ARPA) – CFDA 21.027
Award Amount: \$156,000

Address: 2552 South Church Street
City: Murfreesboro
State: Tennessee
Zip Code +4: 37127-6342

Contact: Daniel Owens
E-mail: daniel.owens@cityschools.net
Phone: 615-893-5313

II. PROJECT SCOPE

Project Overview: The project funded by this Agreement is to continue to underwrite the cost for employment of educational assistants that will provide tutoring services as part of the TNALL CORPS Program.

Background: Subrecipient is a pre-kindergarten through sixth-grade municipal public-school system, also referred to as a "local education agency" established pursuant to T.C.A. §49-2-401 et. seq., Murfreesboro City Charter §92, and Murfreesboro City Code, Chapter 25. The Murfreesboro City School System consists of thirteen (13) schools and educates approximately 9,450 students.

Between 2022 and 2024, Murfreesboro City Schools has implemented a TN ALL Corps tutoring program and has seen positive outcomes in student achievement. Continued funding of this program allows continuation of additional low-ratio, high-dosage tutoring to be provided to students. The services provided by Subrecipient pursuant to this Agreement are hereinafter collectively referred to as the "Program" and are defined in further detail in Part C through E.

The Program funded by this Agreement will be assigned to fund the salaries of Educational Assistants who will be responsible for small group tutoring sessions. These tutoring sessions will be in person, last between 30-45 minutes, and occur 2-3 times per week. Students must remain in tutoring for at least one calendar year and focus on one content area per semester. The tutoring will use high-quality materials that are aligned with classroom content so that classroom instruction is reinforced and enhanced. Tutoring is free for all participating students and targeted toward schools with the highest poverty levels (Title Schools) and schools that have the highest subgroup deficits.

All students who participate in the tutoring program will be required to complete a placement assessment and to complete progress monitoring for the duration of their tutoring support. This will be done through the online assessment component of the free math and reading online resource program.

Education Assistant Role: The Tier 1 Intervention educational assistants allocate the majority of their time to the facilitation of small group tutoring and instruction. Tutoring sessions are provided in person, with a time duration of approximately 45 minutes occurring 2-3 times per school week. The educational assistant assists instructional personnel with the presentation of learning materials and instructional exercises after conferring with the certified teacher on standards-based instructional materials designed to meet student needs. Educational assistants will be expected to:

1. Provide individualized support to teachers and students to meet student needs through differentiated instruction;
2. Model effective instructional strategies;
3. Establish specific goals and strategies targeting student achievement, and monitor and adjust progress toward those goals throughout the year so that continuous academic progress and improvement occurs;
4. Work with school-based and central office staff to meet specific program requirements; and,
5. Collect, analyze, and respond to data collected through the tutoring programs.

Educational assistants will be available to Subrecipient for in-service training in instruction and curriculum topics as required and/or requested. Educational assistants will also have access to a five-module training course for aspiring and alternative educators.

III. PROJECT TIMELINE

The overall project must comply with the timelines in Section II and III of the Agreement. Below is an estimated timeline of this Program:

February 2024	Subrecipient agreement executed
May 2024	Award allocated in FY2025 budget
August 2024	Educational assistants will continue to provide tutoring services to students during the school day

**PART D
PROGRAM BUDGET**

Expense	Amounts
Salaries: 11 Educational Assistants at 37.5 hours each for 9 weeks	
Benefits: Taxes, medical, 401K, unemployment, life, etc. (27% of total salary costs)	
Total Salaries	\$156,000.00
Total Expenses	\$156,000.00

**PART E
PERFORMANCE MEASURES AND REPORTING**

Performance measure reports are to be completed using the form below and in accordance with the following schedule. The performance measure reporting form will be furnished as an excel template and provided to the Subrecipient upon execution of this Agreement. The Subrecipient shall answer all questions and provide all requested supporting documentation in accordance with the Agreement.

Performance Measures and Reporting (PMR) Schedule				
Report	Required Frequency	Report Period Start Date	Report Period End Date	Reporting Due Date
PMR August 2024	Monthly	8/1/24	8/31/24	10/15/24
PMR September 2024	Monthly	9/1/24	9/30/24	11/14/24
PMR October 2024	Monthly	10/1/24	10/31/24	12/15/24
PMR November 2024	Monthly	11/1/24	11/30/24	1/15/25

**PART F
FINANCIAL DRAWDOWNS AND REPORTING**

Financial drawdowns and reports are to be completed using the form below and in accordance with the following schedule. The financial reporting form will be furnished as an excel template and provided to the Subrecipient upon execution of this Agreement. The Subrecipient shall answer all questions and provide all requested supporting documentation in accordance with the Agreement.

Financial Drawdowns and Reporting (FDR) Schedule				
Report	Required Frequency	Report Period Start Date	Report Period End Date	Reporting Due Date
FDR August 2024	Monthly	8/1/24	8/31/24	10/15/24
FDR September 2024	Monthly	9/1/24	9/30/24	11/14/24
FDR October 2024	Monthly	10/1/24	10/31/24	12/15/24
FDR November 2024	Monthly	11/1/24	11/30/24	1/15/25

The final drawdown and closeout report must be submitted by January 15, 2025.

PART G
DUPLICATION OF BENEFITS CERTIFICATION

To be submitted by the Subrecipient with its reimbursement requests.

The undersigned, on behalf of and as a duly authorized agent and representative of the Subrecipient, Murfreesboro City Schools, certifies and represents that all information contained in and enclosed with the reimbursement request is true to the best of his or her knowledge and acknowledges that the City of Murfreesboro (City) has relied on such information to award ARPA assistance. The Subrecipient also certifies that they have not received assistance or reimbursement from any other sources of funding for the specific expenses included in this reimbursement request.

The Subrecipient acknowledges that it may be prosecuted by Federal, State, or local authorities and/or that repayment of all ARPA funds must be repaid to the City in the event that it makes or files false, misleading, or incomplete statements, documents or reimbursement requests.

Per Schedule in Part F
Month of Reimbursement Request

SUBRECIPIENT

Bobby N. Duke, III
Director of Schools

Date: _____

RESOLUTION 24-R-02 authorizing a one-time distribution of funds from the American Rescue Plan Act (ARPA) fund from Volunteer Behavioral Health (hereafter “VBH”).

WHEREAS, Murfreesboro City Schools (hereafter “MCS”) was awarded \$500,000 as a subrecipient through the City of Murfreesboro’s (hereafter “the City”) allocation from the American Rescue Plan Act (ARPA) of 2021 (CFDA 210.27) to fund tutoring to assist in minimizing academic gaps associated with COVID learning loss; and

WHEREAS, on August 18, 2022, City Council approved a Subrecipient Grant Agreement between the City and MCS for a federal award of \$500,000 between August 1, 2022 and June 30, 2024, that was thereafter added to the MCS budget as one-time funding by Resolution 22-R-25 on November 9, 2022; and,

WHEREAS, additional funds in the amount of \$156,000 have become available from VBH and should be designated for use as one-time funding; and

WHEREAS, on February 13, 2024, the Murfreesboro City School Board (hereafter “the Board”) approved amendments to the General Purpose fund for \$156,000 to budget implementation of ARPA funds from VBH and adopted a resolution requesting that City Council make a one-time appropriation in the amount of \$156,000 from the City General Fund to MCS to be used for PURPOSE; and

WHEREAS, the Board acknowledged that because the requested transfer of funds would be a one-time appropriation, it would not increase or otherwise affect the City’s maintenance-of-effort obligation under state law; and

WHEREAS, the City Council adopted Resolution 23-R-15 on June 8, 2023 to implement the FY2024 MCS Budget; and

WHEREAS, it is now desirable and appropriate to adjust and modify the FY2024 MCS Budget by this Resolution to incorporate expenditure decisions made by the Board regarding _____; and

WHEREAS, it is now desirable and appropriate to approve the additional funding to MCS Budget including the expenditure detailed in this Resolution as one-time funding.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The City Council finds that the distribution and use of funds is in the best interest of the City and its citizens.

SECTION 2. The Mayor, City Recorder, and City Attorney are hereby expressly authorized to execute the Subrecipient Agreement attached as Exhibit A consistent with this Resolution.

SECTION 3. The FY2024 MCS Budget as adopted by the City Council is hereby revised to include one-time funding as shown on Exhibit B.

SECTION 4. This Resolution shall be effective immediately upon its passage and adoption, the public welfare and the welfare of the City requiring it.

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Brown
City Recorder

Adam F. Tucker
City Attorney

DRAFT

Agenda Item Title: FY 24 Central Cafeteria Fund 143 – USDA Additional Revenue

Board Meeting Date: February 13, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

TN school districts that experienced challenges in purchasing and receiving food that operators of the National School Lunch Program (NSLP) and School Breakfast Program (SBP) experienced in School Year (SY) 2022-23 received federal funds from the United States Department of Agriculture (USDA). The USDA Food and Nutrition Services (FNS) is offering additional funds to state agencies administering the NSLP and SBP. The amount awarded is \$224,591.29 and it will be used to purchase food.

Staff Recommendation

To approve the FY24 budget amendment to recognize new revenue and expenditures of \$224,591.29 in the Central Cafeteria Fund.

Fiscal Impact

The budget amendment recognized new FY24 revenues and expenditures with no impact to fund balance.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success.

Murfreesboro City Schools Budget Amendment (#6)

BOE Approval

2/13/2024

Central Cafeteria Fund 143
Fiscal Year 2023-2024

FY24 USDA Food and Nutrition Service Fund

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BUDGET AS PASSED OR	AMENDED	AMENDMENT INCREASE
		PREV AMENDED	BUDGET	(DECREASE)
143 R 47114	<u>Revenue</u> USDA Other (Supply Chain)	178,465	403,056	224,591
Total Change to Fund Balance		\$ 178,465	\$ 403,056	\$ 224,591

Expenditures		ORIG BUDGET	AMEND BUDGET	INCREASE
143 E 73100 422	Nutrition - Food Supplies	3,400,950	3,625,541	224,591
Total Increase in Expenditures		\$ 3,400,950	\$ 3,625,541	\$ 224,591

CHANGE IN FUND BALANCE (CASH)

\$ -

To budget \$224,591.29 in FY24 USDA Other (Supply Chain) to help offset food supplies and the associated costs.

 _____
Reviewed by Finance Director/Finance Manager

2/6/24
Date

Approved	<input checked="" type="checkbox"/>		2/6/24
Declined	<input type="checkbox"/>	Director of Schools	Date

Agenda Item Title: FY24 Central Cafeteria Fund 143 - Rebate

Board Meeting Date: February 13, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

This rebate is paid by the Department of Agriculture to minimize charges incurred by the SFA (School Food Authority) for storage and distribution of USDA foods from the state contracted warehouse. As of the date of this voucher, the SFA is a participant in the National School Lunch Program and currently eligible for USDA foods.

Staff Recommendation

To approve the FY24 budget amendment to recognize new revenue and expenditures of \$9,651.49 in the Central Cafeteria Fund.

Fiscal Impact

The budget amendment recognized new FY24 revenues and expenditures with no impact to fund balance.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success.

Murfreesboro City Schools Budget Amendment (#6)

BOE Approval

2/13/2024

Central Cafeteria Fund 143
Fiscal Year 2023-2024

FY24 USDA Food and Nutrition Service Fund

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BUDGET AS PASSED OR	AMENDED	AMENDMENT INCREASE
		PREV AMENDED	BUDGET	(DECREASE)
143 R 47114	<u>Revenue</u> USDA Other	403,056.29	412,707.78	9,651.49
Total Change to Fund Balance		\$ 403,056.29	\$ 412,707.78	\$ 9,651.49

Expenditures		ORIG BUDGET	AMEND BUDGET	INCREASE
143 E 73100 422	Nutrition - Food Supplies	3,625,541.29	3,635,192.78	9,651.49
Total Increase in Expenditures		\$ 3,625,541.29	\$ 3,635,192.78	\$ 9,651.49

CHANGE IN FUND BALANCE (CASH) \$ -

To budget \$9,651.49 in FY24 Revenue USDA Other to help offset food supplies and the associated costs.

 2/6/24

 Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>		2/6/24
Declined	<input type="checkbox"/>	Director of Schools	Date

Agenda Item Title: FY24 General Purpose Fund 141 – Robotics Grants

Board Meeting Date: February 13, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Grant revenue for district-wide support to help grow the Robotics program in each school. The money will help provide for registration, competition, transportation, supplies, and new robots for the district.

The City Schools Foundation awarded Murfreesboro City Schools a total of \$6,531.99.

Nissan awarded Murfreesboro City Schools a total of \$7,900.00.

Richard Siegel Foundation awarded Murfreesboro City Schools a total of \$6,279.92.

Staff Recommendation

To approve the FY24 budget amendment to recognize new revenue and expenditures of \$20,711.91 in the General Purpose Fund 142 Donations-Robotics.

Fiscal Impact

New Robotics revenue of \$20,711.82 will be budgeted to fund the robotics program.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
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Murfreesboro City Schools Budget Amendment (#6)

BOE Approval

2/13/2024

General Purpose Fund 141
Fiscal Year 2023-2024

FY24 Donations-Robotics Fund

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BUDGET AS PASSED OR	AMENDED	AMENDMENT INCREASE
		PREV AMENDED	BUDGET	(DECREASE)
141 R 44570	<u>Revenue</u> Donations-Robotics	-	20,711.91	20,711.91
Total Change to Fund Balance		\$ -	\$ 20,711.91	\$ 20,711.91

Expenditures		ORIG BUDGET	AMEND BUDGET	INCREASE
141 E 71100 599	Other Charges-Robotics	-	20,711.91	20,711.91
Total Increase in Expenditures		\$ -	\$ 20,711.91	\$ 20,711.91

CHANGE IN FUND BALANCE (CASH)

\$ -

To budget \$20,711.91 in FY 24 Revenue Donations-Robotics to support the Robotics program in each school for registration, competition, transportation, supplies, and new robots.

Daniel Cherry 2/6/24
Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>	<u><i>Bobby W. Duke III</i></u>	<u>2/6/24</u>
Declined	<input type="checkbox"/>	Director of Schools	Date

Agenda Item Title: FY24 21st Century Grant Budget Amendment

Board Meeting Date: February 13, 2024

Department: Federal Programs and ESP

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

The FY 24 21st CCLC Grant amendment re-budgets \$6678.00 from the bus drivers, dental, and fringe line items to salaries and medical. Funding reallocation will be used to fund the change in certified salary and benefits for the new coordinator.

Staff Recommendation

Recommended approval of the FY 24 21st CCLC Grant revision.

Fiscal Impact

There are no new revenues or major programmatic changes. The budget revision is reasonable, necessary and allowable for the successful completion of the grant requirements.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
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Murfreesboro

City Schools

INTER-FUND BUDGET TRANSFER/AMENDMENT REQUEST

Budget Fiscal Year FY24 Federal Projects Fund 142-21st CCLC
 BOE Meeting Date 13-Feb-24

Account	Description	Increase	Decrease
	21st CCLC		
142 E 73300 105	Supervisor/Director	2,669	
142 E 73300 189	Other Salaries & Wages		5,988
142 E 73300 207	Medical Insurance	4,009	
142 E 73300 208	Dental Insurance		98
142 E 73300 299	Other Fringe Benefits		593
Total		<u>\$ 6,678</u>	<u>\$ 6,678</u>

Explanation: The FY24 21st CCLC amendment is to rebudget \$6,678 from bus drivers salary, dental and fringe benefits to fund a change in the director salary line item and medical for the new 21st CCLC grant coordinator.
The budget revision is reasonable, necessary and allowable.

D. J. [Signature] 2/7/24
 Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>	<u><i>Bobby [Signature]</i></u> Director of Schools	<u>2/7/24</u> Date
Declined	<input type="checkbox"/>		

Agenda Item Title: FY24 Title IX McKinney-Vento Budget

Board Meeting Date: February 13, 2024

Department: Finance & Federal programs

Presented by:

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

The Federal Program and Finance departments are seeking approval for an amendment to FY24 Title IX McKinney-Vento budget. The amendment request will decrease the salary line by \$1500.00 and add Fringe Benefits of \$1,500 for an employee who has opted out of medical insurance. The savings in the salary line are available due to the position being unfilled for several months during the transition of employees.

Staff Recommendation

Recommend approval of the budget amendment from the salary line to benefits line item for Title IX McKinney-Vento for FY 23-24.

Fiscal Impact

The amendment amount is \$1500.00 for the FY 23-24 school year. There is no change to program services.

Connection to MCS's Five-Year Strategic Plan

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Murfreesboro

City Schools

INTER-FUND BUDGET TRANSFER/AMENDMENT REQUEST

Budget Fiscal Year FY24 Federal Projects Fund 142-Title IX McKinney Vento
 BOE Meeting Date 13-Feb-24

Account	Description	Increase	Decrease
	Title IX McKinney Vento		1,500
142 E 72210 189	Other Salaries & Wages		
142 E 72210 299	Other Fringe Benefits	1,500	
Total		<u>\$ 1,500</u>	<u>\$ 1,500</u>

Explanation: The FY24 Title IX McKinney Vento amendment is to add Other Fringe Benefits for an employee who
has opted out of medical insurance. Savings from Other Salaries & Wages will be transferred to that
line item.
The budget revision is reasonable, necessary and allowable.

[Signature] 2/6/24
 Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>	<u><i>Bobby W Dulle III</i></u> Director of Schools	<u>2/6/2024</u> Date
Declined	<input type="checkbox"/>		

Agenda Item Title: Multilingual Liaison

Board Meeting Date: February 13, 2024

Department: Finance and Federal programs

Presented by:

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Federal Programs department seeks approval to allocate FY 22-23 Title III carryover to employ a .5 FTE multilingual liaison (Hispanic) through June 30, 2024.

Staff Recommendation

Recommend approval to use Title III FY 22-23 carryover to employ an hourly multilingual liaison.

Fiscal Impact

Salary with Medicare \$7169.67 for the FY 23-24 school year. The appropriate line items currently hold enough funds to make this adjustment, and no budget amendment is necessary.

Connection to MCS's Five-Year Strategic Plan

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Agenda Item Title: Approval of Fiscal Agent Bond

Board Meeting Date: February 13, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Approval of the statutory bond for our new Finance Director, Daniel Owens, for a one-year term beginning January 8, 2024, through January 7, 2025.

State law requires the Treasurer or fiscal agent of a Local Education Agency (LEA), other than a County LEA, to execute a statutory bond. This bond protects the School District from loss of funds.

The amount of the bond, \$3,030,843 (with a premium of \$2,501), is a calculation formula based on revenues from MCS' most recent audit approved by the Comptroller. (A refund will be issued by the insurance company for the remaining premium on Kim Williams' bond.)

Staff Recommendation

We recommend approval of the new Surety Bond.

Fiscal Impact

\$2,501 from the General Purpose budget. This amount is commensurate with the approved FY24 budget, and no budget amendment is necessary.

Connection to MCS's Five-Year Strategic Plan

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- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



SURETY'S BOND NO. CBE1038201

STATE OF TENNESSEE
Murfreesboro City Schools SCHOOL DISTRICT
OFFICIAL STATUTORY BOND
TREASURER OR FISCAL AGENT FOR
LOCAL EDUCATION AGENCY
OFFICE OF Finance Director

KNOW ALL MEN BY THESE PRESENTS:

That Daniel Owens of Murfreesboro City Schools (Special/City School District), of Murfreesboro Tennessee, as Principal, and The Cincinnati Insurance Company as Surety, are held and firmly bound unto **THE STATE OF TENNESSEE** in the full amount of Three Million Thirty Thousand Eight Hundred and Forty-Two Dollars (\$ 3,030,843.00) lawful money of the United States of America for the full and prompt payment whereof we bind ourselves, our representatives, successors and assigns, each jointly and severally, firmly and unequivocally by these presents.

WHEREAS, The said Principal was duly appointed to the office of Finance Director of and for Murfreesboro City Schools School District for the 0 year term beginning on the 4th day of January, 2024 and ending on the 4th day of January, 2025, and in such capacity is required to give this bond under T. C. A. § 49-3-315(b).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH:

- That if the said Daniel Owens, Principal, shall:
1. Faithfully perform the duties of the office of Finance Director of Murfreesboro City School District during such person's term of office or continuance therein; and,
 2. Pay over to the persons authorized by law to receive them, all moneys, properties, or things of value that may come into such Principal's hands during such Principal's term of office or continuance therein without fraud or delay, and shall faithfully and safely keep all records required in such Principal's official capacity, and at the expiration of the term, or in case of resignation or removal from office, shall turn over to the successor all records and property which have come into such Principal's hands, then this obligation shall be null and void; otherwise to remain in full force and effect.

WITNESS our hands and seals this 24th day of January, 2024.

WITNESS - ATTEST:

PRINCIPAL:

COUNTERSIGNED BY:

SURETY: The Cincinnati Insurance Company

[Signature]
Tennessee Resident Agent



by: [Signature]
James W Miley

(Attach evidence of authority to execute bond)

ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF TENNESSEE
COUNTY OF Rutherford

Before me, a Notary Public, of the State and County aforesaid, personally appeared Daniel Owens to me known (or proved to me on the basis of satisfactory evidence) to be the individual described in the foregoing bond as Principal, and who, upon oath, acknowledged that such individual executed the foregoing bond as such individual's free act and deed.

Witness my hand and seal this 1st day of February, 2024.

My Commission Expires: June 23, 2025.



[Signature]
Notary Public

(over)

ACKNOWLEDGEMENT OF SURETY

STATE OF TN
COUNTY OF Rutherford

Before me, a Notary Public, of the State and County aforesaid, personally appeared James W Miley with whom I am personally acquainted and, who, upon oath, acknowledged himself/herself to be the individual who executed the foregoing bond on behalf of The Cincinnati Insurance Company, the within named Surety, a corporation duly licensed to do business in the State of Tennessee, and that he/she as such individual being authorized so to do, executed the foregoing bond, by signing the name of the corporation by himself/herself as such individual.

Witness my hand and seal this 24th day of January, 2024.
My Commission Expires: May 16, 2026.



APPROVAL AND CERTIFICATION

SECTION I. (Applicable to Treasurer and Fiscal Agents of Local Education Agencies)

Bond and Sureties approved by _____, Chairman of _____ School District, on this _____ day of _____, 2____.

Signed: _____
Chairman Board of Education

CERTIFICATION:

I, _____, Secretary of _____ School District, hereby certify that the foregoing bond was approved by the Board of Education, in open session on the _____ day of _____, 2____, and entered upon the minutes thereof.

Signed: _____
Secretary

SECTION II.

FOR USE BY REGISTER OF DEEDS

SECTION III.

ENDORSEMENT:

Filed with the Office of the County Clerk, County of _____, this _____ day of _____, 2____.

Signed: _____
County Clerk

Form Prescribed by the Comptroller of the Treasury, State of Tennessee
Form Approved by the Attorney General, State of Tennessee

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

CBE1038201

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint

James W Miley

of Murfreesboro TN their true and legal Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and deliver on behalf of the Companies as Surety, any and all bonds, policies, undertakings or other like instruments, as follows:

Three Million Thirty Thousand Eight Hundred and Forty-Three D \$ 3,030,843.00

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Senior Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or any Senior Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Vice-President and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or any Senior Vice President this 16th day of March, 2021.



STATE OF OHIO)SS:
COUNTY OF BUTLER)

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Stephen A. Ventre

On this 16th day of March, 2021 before me came the above-named President or Senior Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



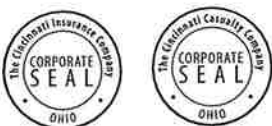
Keith Collett

Keith Collett, Attorney at Law
Notary Public – State of Ohio

My commission has no expiration date.
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Vice-President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 24th day of January, 2024



Ed H

Agenda Item Title: Labor Market Report and Differentiated Pay Plan

Board Meeting Date: February 13, 2024

Department: Student Support Services

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

In the Fall of 2023, MCS partnered with the TN Education Research Alliance (TERA) and SCORE on a project to help analyze and research the current educator labor market trends. As part of this project, TERA provided a synthesis of MCS's human capital data from 2017 – 2023. This report is being used as we continue to consider strategies for recruitment and retention.

Additionally, we will be presenting a draft of our FY25 Differentiated Pay Plan that will be finalized during the budget process.

Staff Recommendation

For information only

Fiscal Impact

The differentiated pay plan does have a fiscal impact. This will be discussed once the draft is finalized and presented during budget work sessions.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



Murfreesboro City Schools

Educator Labor Market Landscape

Nicole Mader & Analisa Pines

Introduction

Reliable access to effective educators is essential for improving student achievement. Teachers have the largest impact on student performance of any in-school factor.¹ There has been increased attention on a teacher pipeline crisis – one that preceded the disruptive COVID-19 pandemic but has likely worsened in recent years. The data surrounding the “teacher pipeline crisis” in Tennessee is complicated.

- Over the last 10 years, **EPP completer numbers have dropped by 40 percentage points** (2,054 completers).²
- **The impact of teacher vacancies is not felt equally in the state.** Rural Districts are experiencing more vacancies across all grade bands compared to suburbs and towns.³
- About 90% of teachers are retained in Tennessee classrooms each year. However, **after five years, Tennessee lost one-third of its 2013-14 cohort of classroom educators.** six out of 10 remaining teachers were still teaching in the same school.⁴

Research-based practices and reflection on historic patterns in staffing challenges can ensure that Tennessee school districts are best positioned to address their unique staffing needs. The framework outlined below for staffing challenges incorporates data and guiding questions organized around four focus areas. Each section is designed to spark conversations and better position Tennessee school districts to address teacher pipeline challenges in service of students.

Please note that data for the 2022-23 school year were drawn from TDOE's preliminary staff files and are subject to change.

Comparative Districts Methodology

The school districts participating in this first iteration of educator labor market reports represent approximately one-quarter of the student population in Tennessee and include examples of the types of district diversity across the state in terms of size, geography, and student demographics of the state. Comparisons groups were created to give report users a chance to make reasonable comparisons to put their district data in context. Each group was created primarily by organizing geographically proximate districts participating in the project within a grand division or CORE region, with secondary attention to district size where warranted. It is SCORE's hope that in a statewide version of this report there will be additional capabilities to create even more relevant comparison groups for a given district.

¹ [Opper, I. Teachers Matter. Rand Corporation](#)

² TDOE presentation, 2023

³ TDOE presentation, 2023

⁴ [Collins, E., & Schaaf, K. \(2020\). Teacher retention in Tennessee. Tennessee Department of Education.](#)

Framework For Addressing Educator Workforce Challenges

Attract New Talent

Related Data

- Recent Graduates Employed by EPP
- Early Career Teachers and School Leaders
- Teachers who have Become Administrators
- Number of Teachers by Experience Level

Questions to Consider

- How can relationships with EPPs and community members be leveraged to improve the teacher pipeline?

Lead for Retention

Related Data

- Early Career Teachers' Supports Received and Plans to Stay
- Teacher Turnover
- Number of Teachers Eligible for Retirement
- Teacher Plans for the Next School Year
- Reasons for Leaving

Questions to Consider

- What patterns exist among teachers that turnover and teachers that do not turnover?

Maximize Current Talent

Related Data

- Number of Students and Staff Over Time
- Percent of Teachers at each Level of Effectiveness and Growth Score
- Average Teacher Salary by Experience Level

Questions to Consider

- Can innovative schedules and teacher allocations make better use of existing talent?

Education Industry in Community Context

Related Data

- Residential and Student Population Change
- Racial/Ethnic Demographics across State, County, Students and Staff
- Family Poverty and Student Economic Disadvantage
- Median Incomes vs. Staff Salary

Questions to Consider

- Who has historically been missing or underrepresented from the teacher pipeline?
- What partnerships can strengthen recruitment and retention in the education industry?

In addition to exploring data insights for discussion and further investigation, district leaders can take immediate actions to assess and manage their educator talent strategies. Foundational across all of these strategies include:

- **Setting clear and specific goals for recruitment, hiring, and retention** – Use historical data to inform these goals, and share them with district and school leaders and staff.
- **Creating a talent calendar** – Include key milestones and tasks related to recruiting, hiring, and retaining staff.
- **Building a talent team** – Leverage current leaders and include key teachers and other support staff to guide and execute on the work.

Each report section will include additional immediate actions for consideration relevant to the data of that section. Resources for further exploration include:

- [Transforming the Teacher Role: How Innovative Designs Can Improve Satisfaction, Retention, and Student Experiences](#) (Transcend)
- [EdFuel Talent Playbook](#) (EdFuel)
- [TNTP Talent Framework](#), as well as the associated [short-term action document](#)
- [Creativity from Necessity: A Practical Toolkit for Leaders to Address Teacher Shortages](#) (Bellwether)

Attract New Talent

At the beginning of the teacher pipeline, districts need to attract new talent. Between 2010 and 2020, there were more than 2,000 fewer EPP completers, a 40-percentage point drop in Tennessee. Furthermore, teacher vacancies are often concentrated in Tennessee's rural and urban districts, in middle grades, ESL, world language, special education, early childhood, and Math.⁵ A common barrier for would-be teachers in the state is the cost of an EPP. On average, students of Tennessee public EPPs graduate with \$34,000 of student debt. Meanwhile, the average starting salary for a Tennessee teacher is \$40,000.

Relationships with EPPs and community members can lead to important developments in school districts' teacher pipelines. Questions to consider include:

- What relationships between school districts and EPPs currently exist? How can relationships be built and strengthened?
- Are fewer teachers coming from high-quality EPPs nearby?
- Are there involved parents or community members who could be recruited to formally work in schools? What programs exist to support these potential new hires?

Strategies To Consider: There are programs and policies designed to address challenges school districts face in attracting new talent. Some of these levers to address the teacher pipeline include:

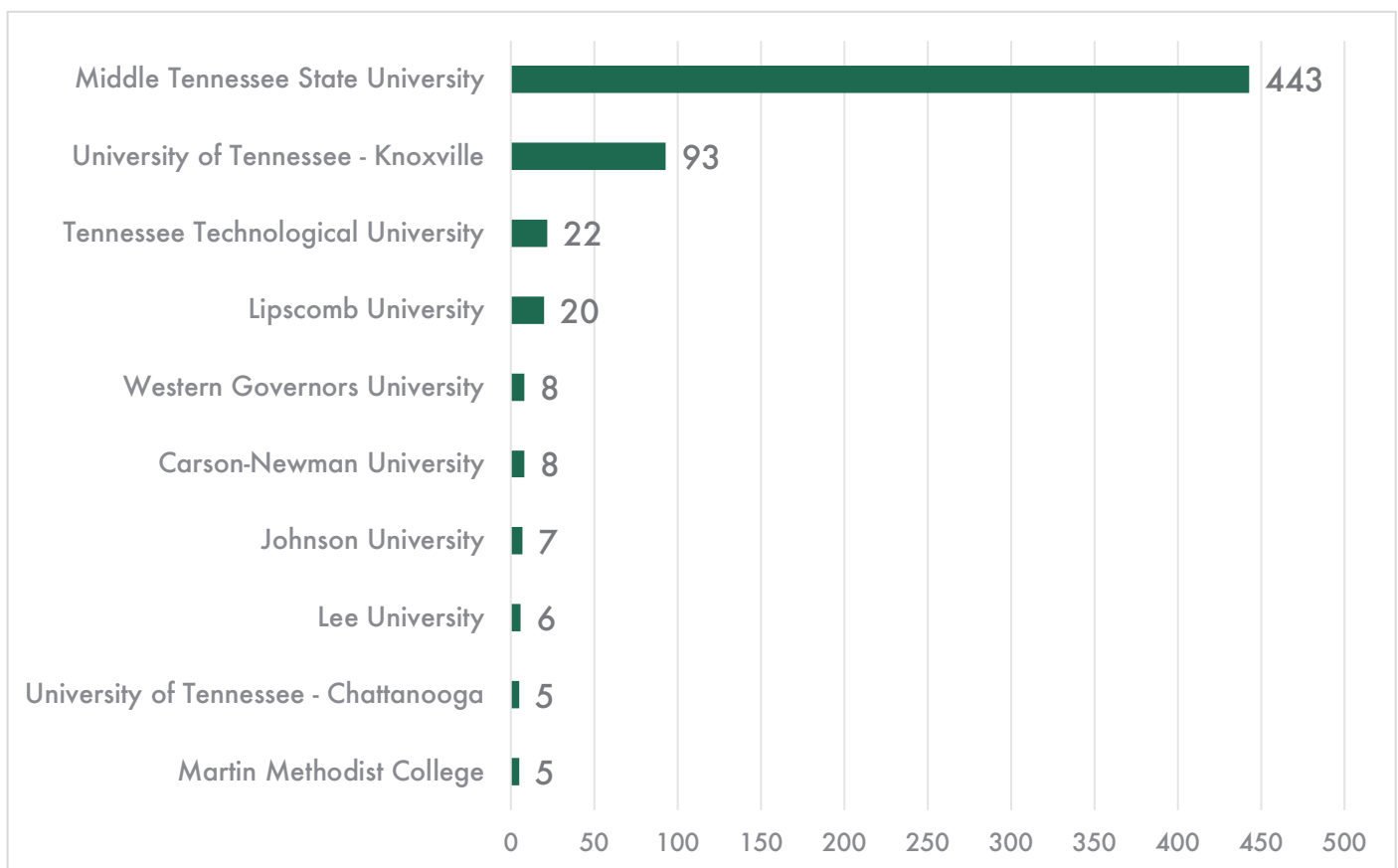
- The Tennessee Future Teacher Scholarship is a last-dollar scholarship for future educators enrolled in a TN EPP who commit to teaching for four years in a subject area with a critical shortage or in a Tennessee public school that is at-risk or distressed.
- District-led EPPs, such as Rutherford Teach Now, offer districts the opportunity to recruit new teachers to their schools, while providing them with mentorship, coaching, and a pathway to a teaching certification.
- Grow Your Own (GYO) and Teacher Residencies are additional pathways that recruit new teachers to the profession while supporting them to and through the requisite steps of licensure. Multiple GYO and Residency programs exist across the state.
- Occupational Teaching Licenses are available to industry professionals seeking to enter the classroom. Requirements for occupational teaching licenses include: current industry recognized credentials, at least five years of experience in the endorsement area, and enrollment in an EPP that is recognized by the State Board of Education.

⁵ [Collins, E., & Schaaf, K. \(2020\). Teacher retention in Tennessee. Tennessee Department of Education.](#)

For district leaders seeking immediate action steps, consider:

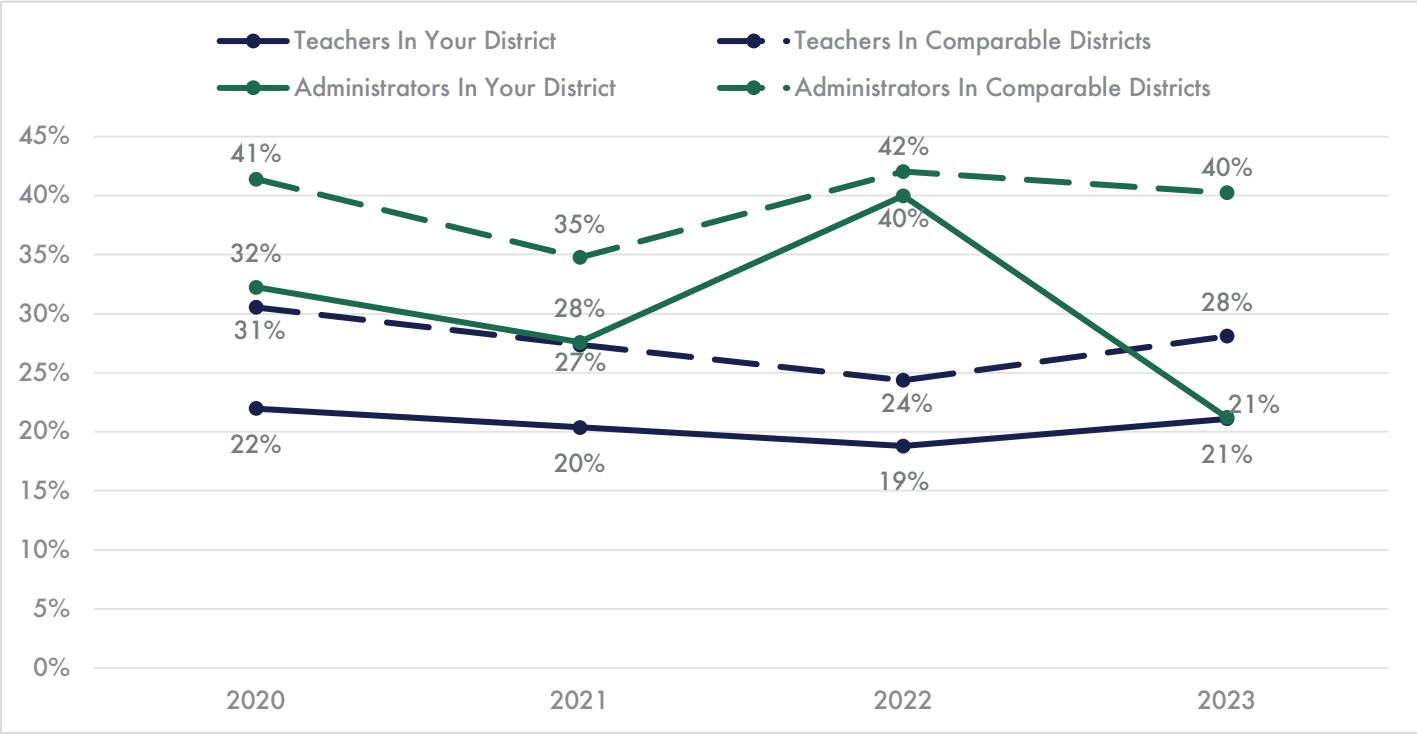
- Developing an employee value proposition that articulates what makes your district unique as an employer – Use focus groups to understand teachers’ lived experiences, document the value proposition and revise based on feedback from a range of teachers and staff, and include the information in job descriptions or on the district website.
- Creating an onboarding plan for new hires – Ensure expectations and support structures are clearly communicated, build in check points to connect with new hires, and include support structures for new hires (welcome packet, welcome event, and mentors for new staff)
- Implementing a staff referral system – Include incentives for staff members who refer candidates to the school district.

Figure 1: Recent Educator Prep Program Graduates Employed in Your District



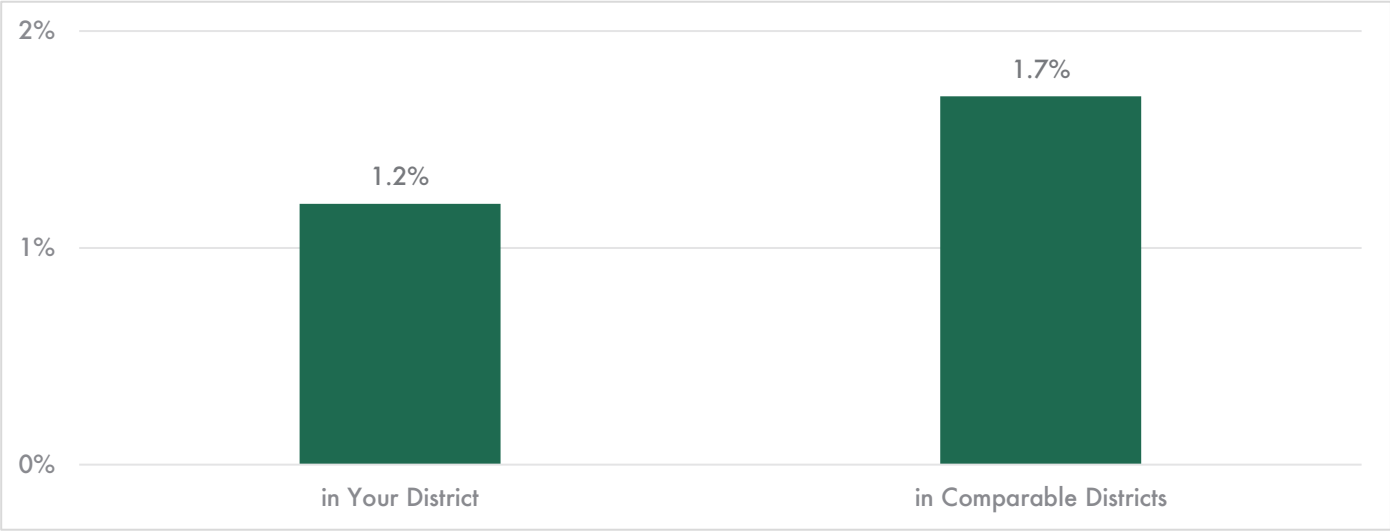
Note: Showing TN-based EPPs with at least 5 graduates from 2017 to 2023.

Figure 2: Percent of Teachers and School Leaders in the First Three Years in their Position



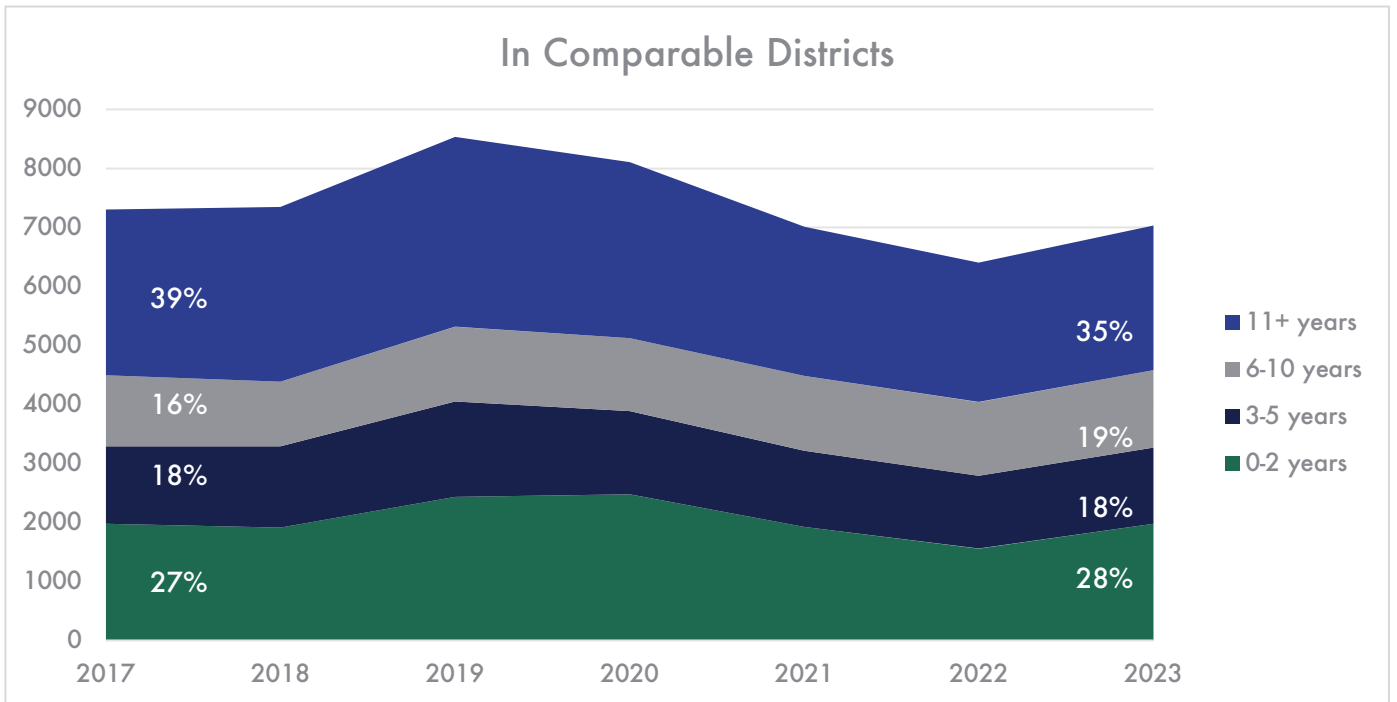
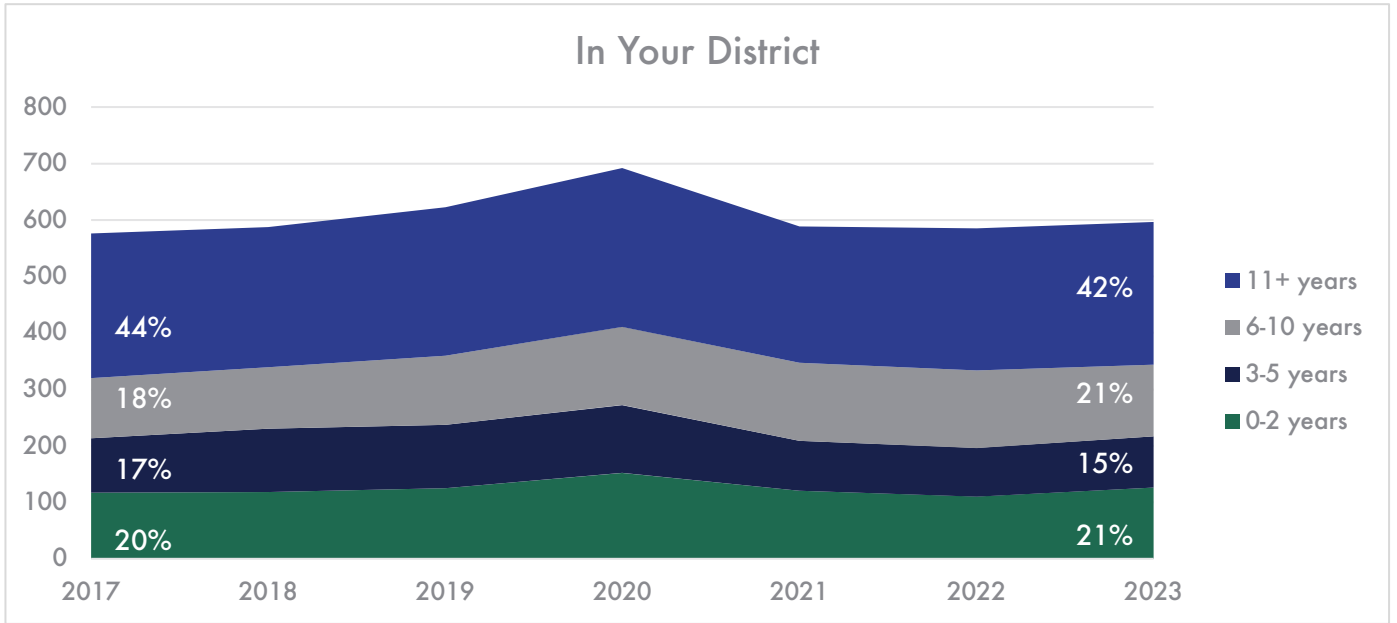
Note: Teacher years of experience are provided by EIS. Administrator years of experience were calculated based on assignment labels in EIS, and can only be counted since 2016-17 (the first year of the data).

Figure 3: Percent of Teachers Who Became Administrators Between 2017 and 2023



Note: Teacher to administrator transitions were calculated based on assignment labels in EIS.

Figure 4: Number of Teachers by Experience Level



Note: Teacher years of experience are provided by EIS.

Lead for Retention

Although some attrition is part of any profession, healthy teacher pipelines retain talent year to year. Improving retention is an important part of any strategy to strengthen teacher pipelines. A key question for school and district leaders is how to retain effective teachers and leaders to build strong teams over time. The 5,600 teachers (8% of the teaching force) that were not retained in Tennessee in 2022 could completely fill the state's teacher talent gap.⁶ Notably, Tennessee lost one-third of its 2013-14 cohort of classroom educators after five years. Only six out of 10 remaining teachers were still teaching in the same school.⁷ Additionally, 22% percent of administrators in 2017-18 changed schools or left administrative roles in 2018-19.⁸

Intentional support and coaching can play a pivotal role in retention for teachers and school leaders. Questions to consider include:

- What patterns exist among teachers that turnover and teachers that do not turnover?
- Are school leaders asking their best teachers to stay?
- Are principals supported enough to support their teachers?
- What does coaching and mentorship look like for teachers and principals at different levels of efficacy?

Strategies To Consider: There are programs and policies designed to address challenges school districts face in leading for retention. Some of these levers to address the teacher pipeline include:

- Targeted mentorship and coaching from principals and teacher leaders to teachers at every level of effectiveness (LOE) can improve retention and instructional practices.
- Assigning smaller class rosters to novice teachers can create more manageable workloads and allow more space for targeted coaching.
- Regularly soliciting teachers' perspectives and opinions allows school leaders to understand the most pressing needs and desires of their staff. With this information, school leaders can create environments that support and value educators, leading to increased retention.

⁶ [Teacher Retention in Tennessee - TDOE](#)

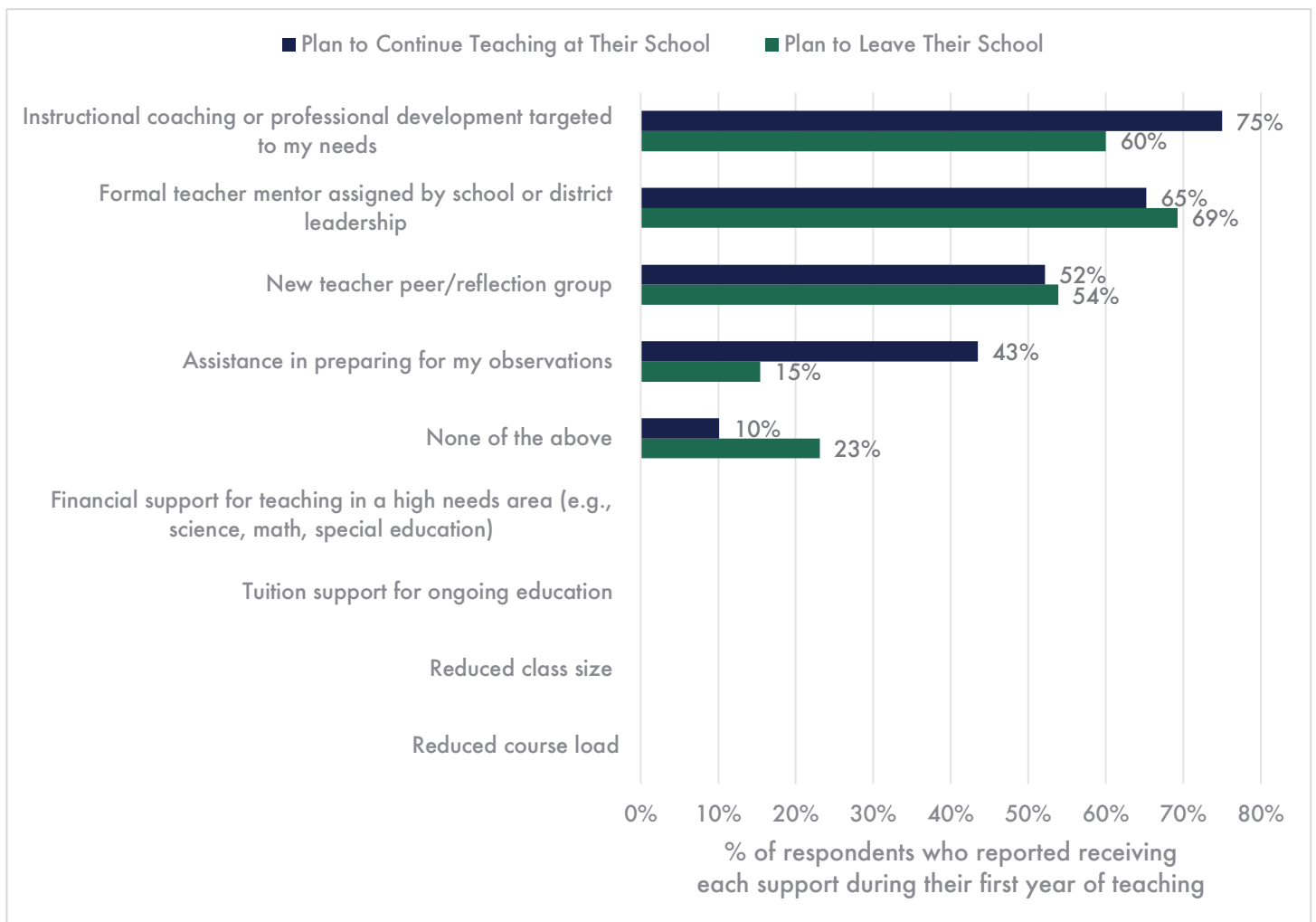
⁷ [Teacher Retention in Tennessee - TDOE](#)

⁸ Boyd, Lankford, et al. 2011; Kraft, Marinell, and Yee 2016; Ladd 2011

For district leaders seeking immediate action steps, consider:

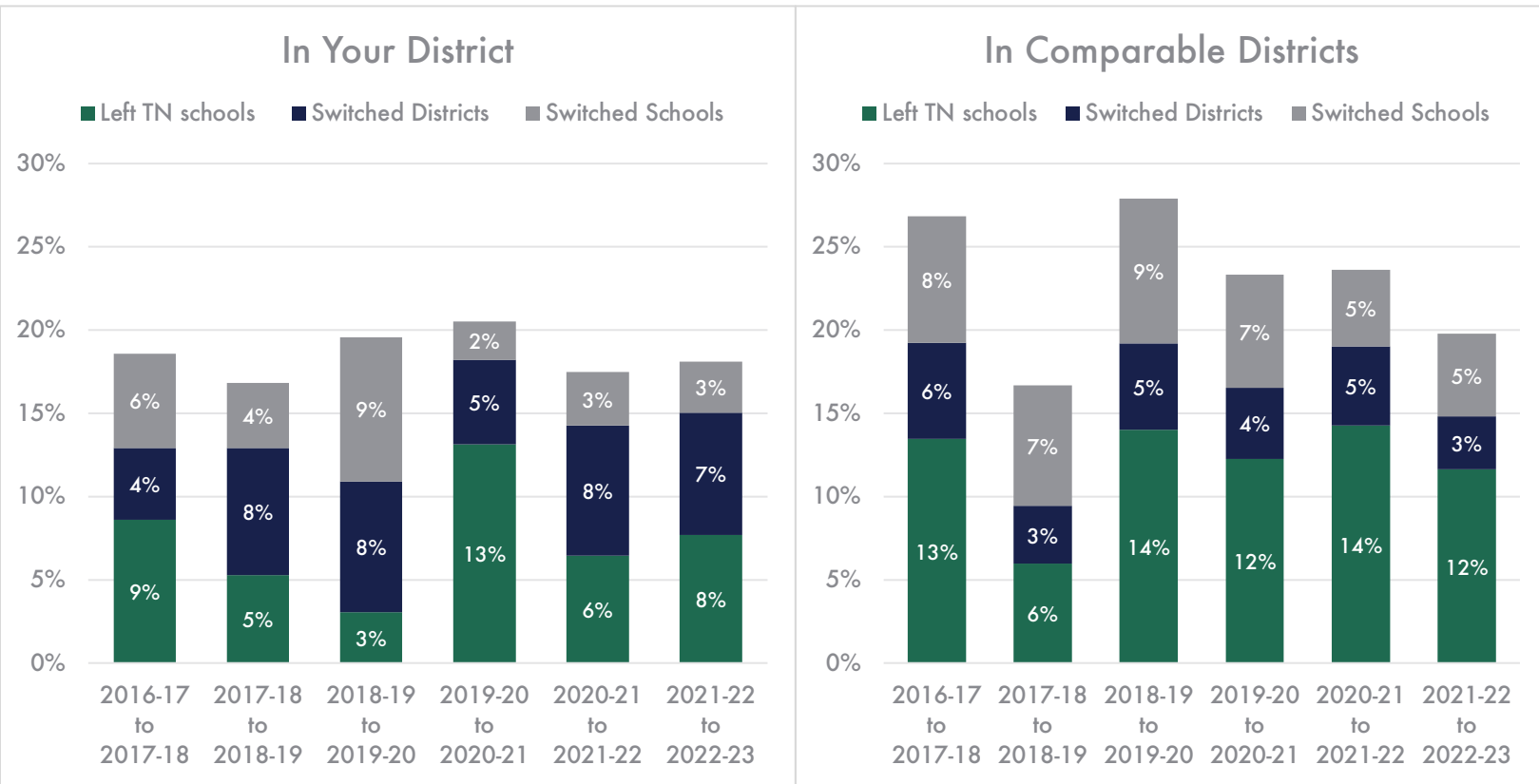
- Developing systems to collect and track key data – Conduct exit surveys, track key data around hiring, promotion, turnover, and teacher leadership, and ensure data can be analyzed by gender, age, race, and years of experience.
- Implementing consistent structures to elicit staff feedback – Conduct formal and informal surveys, 1:1 check-ins, and focus groups.
- Planning and execute “stay” conversations – Ensure these conversations occur prior to winter break.

Figure 5: Supports Received by First-Year Teachers in Your District



Note: Showing responses from 108 early career teachers in your district who responded to the 2021, 2022, and 2023 TN Educator Survey, combined.

Figure 6: Teacher Turnover Over Time



Note: Turnover is calculated by counting the number of teachers who were not teaching in the same school or district the following school year.

Figure 7: Teacher Turnover by Experience Level, 2016-17 to 2022-23

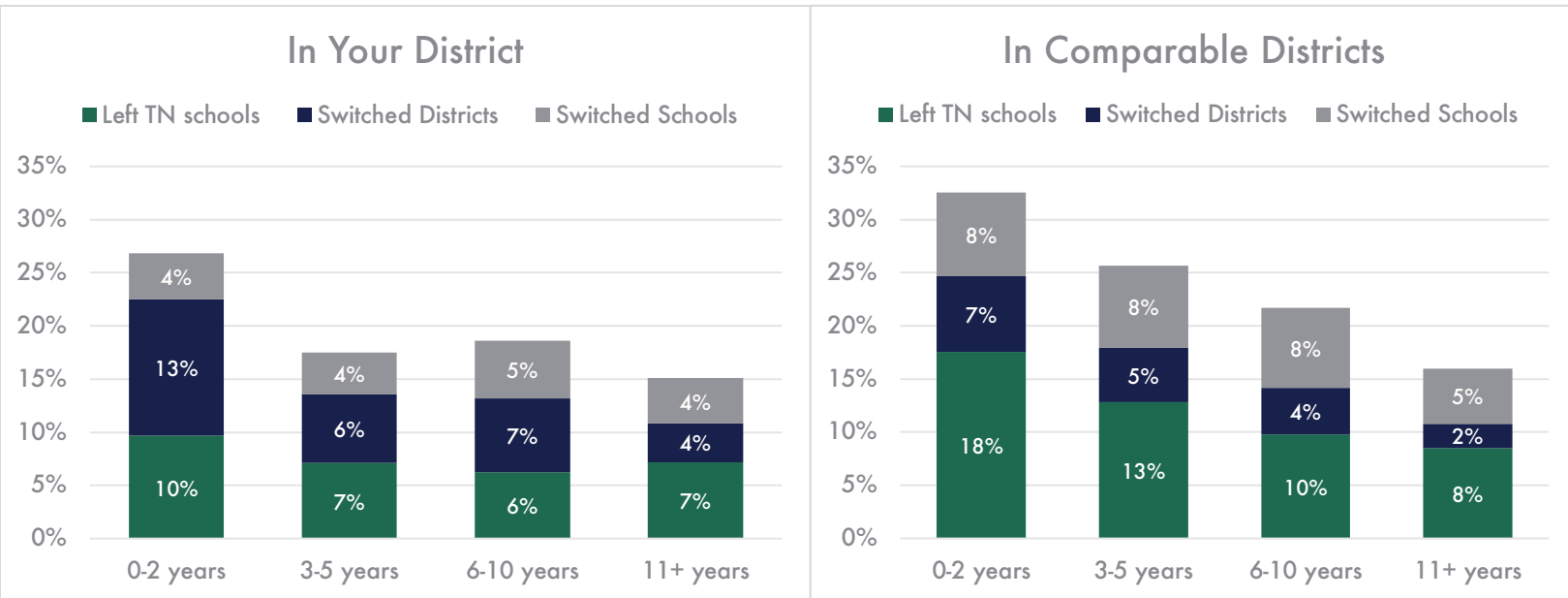


Figure 8: Teacher Turnover by TVAAS Growth Score, 2016-17 to 2022-23

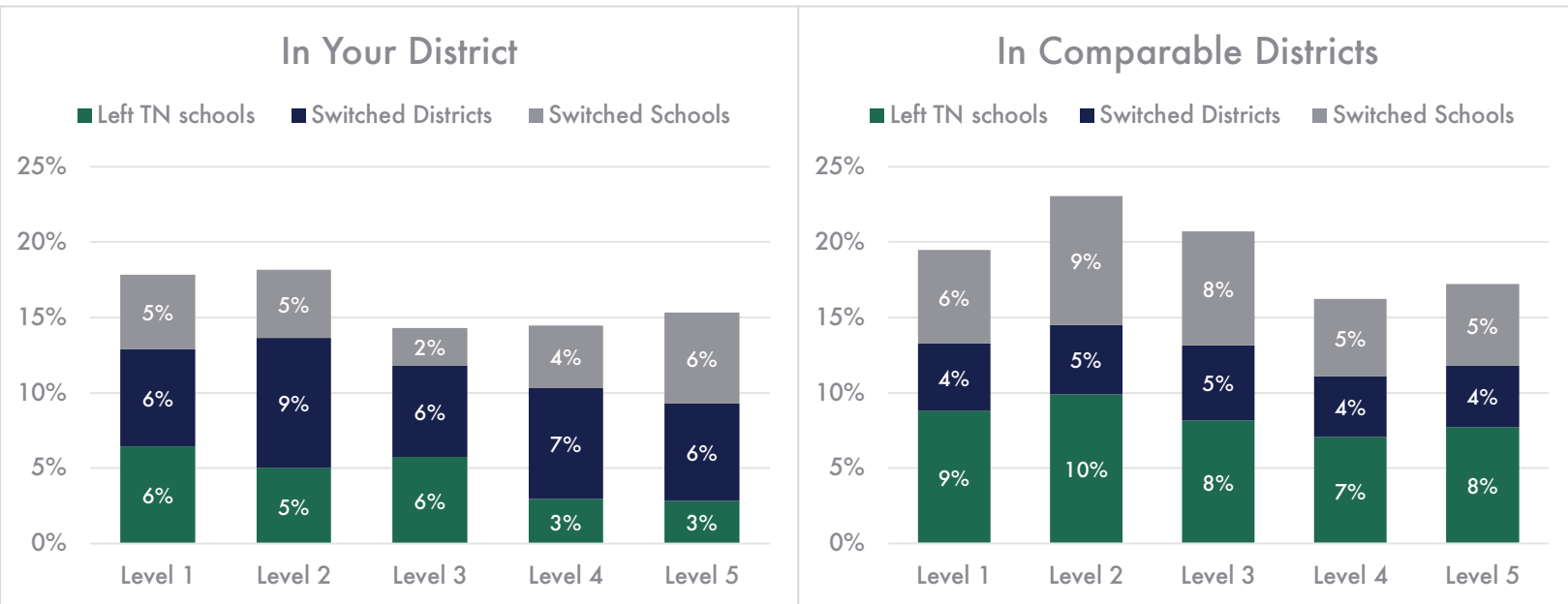


Figure 9: Teacher Turnover by License Type, 2016-17 to 2022-23

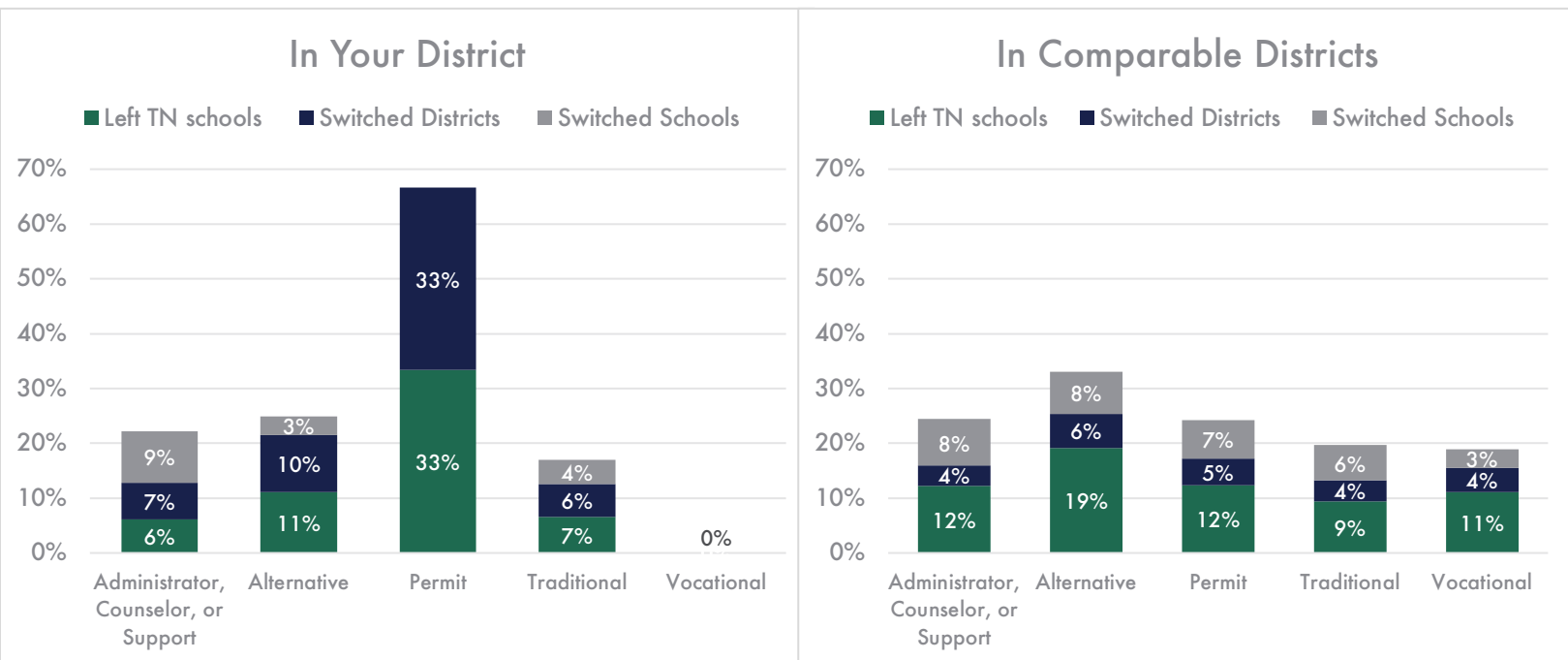
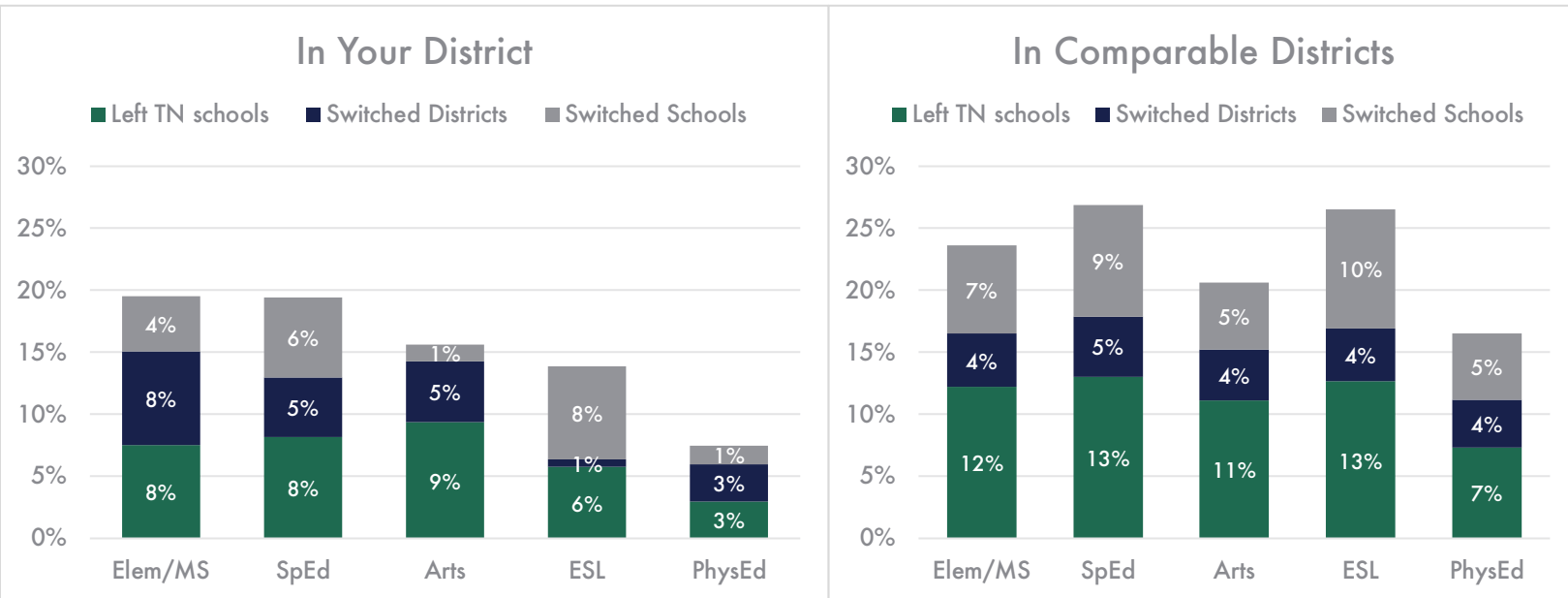
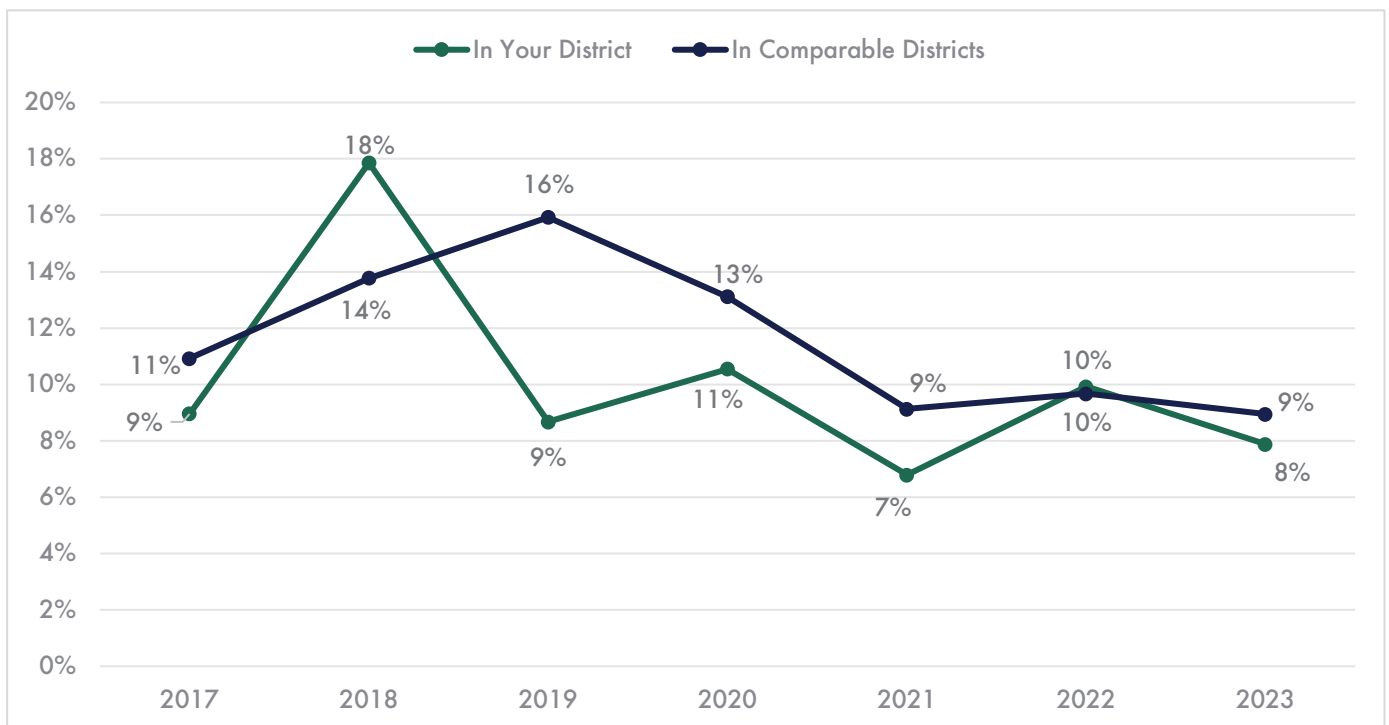


Figure 10: Teacher Turnover by Subject Area, 2016-17 to 2022-23



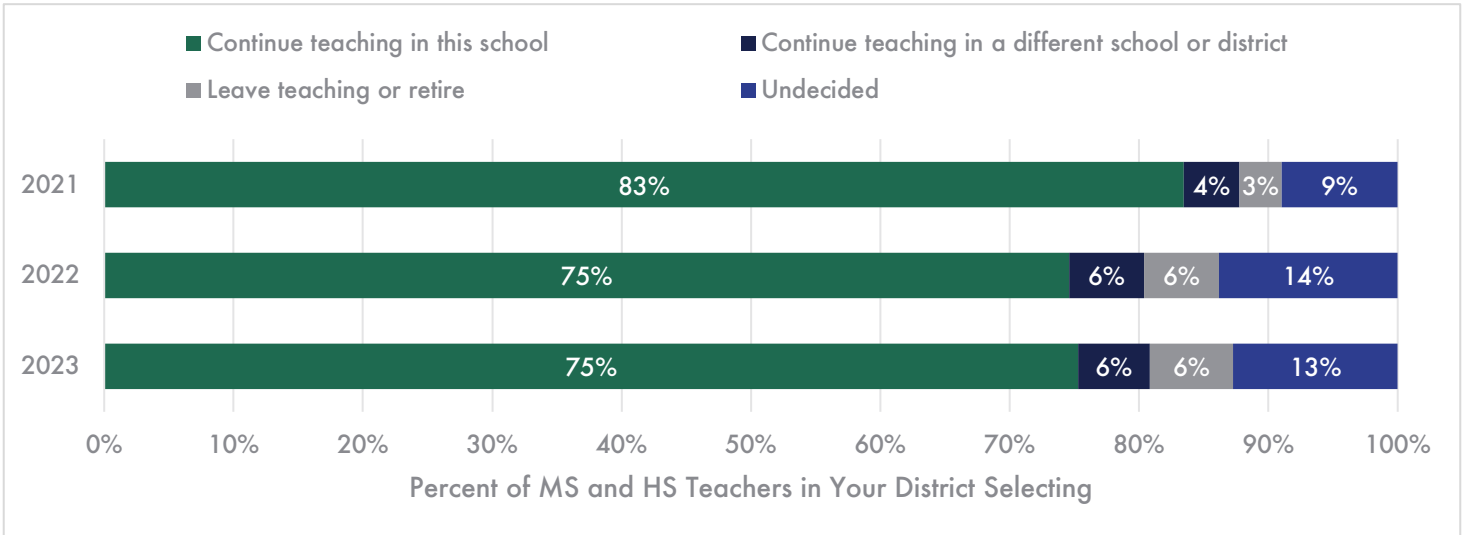
Note: Showing only the top five subject areas by number of teachers in your district. Subject areas were identified either through assignment labels in TDOE's staff dataset or endorsement codes in TDOE's professional certification dataset.

Figure 11: Percent of Teachers Eligible for Retirement Over Time



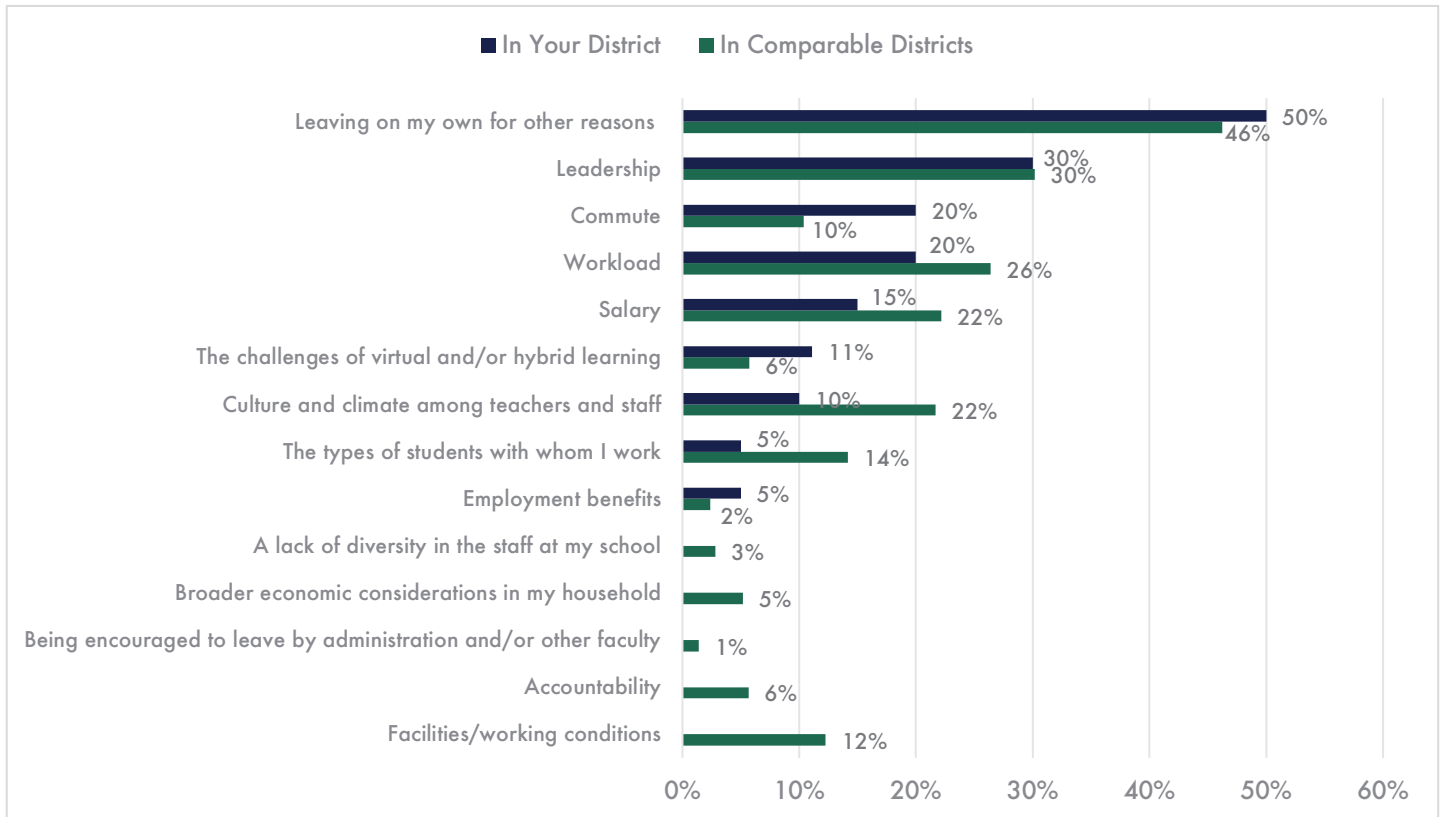
Note: Retirement eligibility is defined here as teachers who are age 60 or older with five years of service or any age with 30 years of service, according to EIS. This does not capture the complexity of individual districts' rules, partial eligibility, etc.

Figure 12: Teachers' Plans for the Next School Year Over Time



Note: Showing responses from an average of 342 teachers in your district who responded to the 2021, 2022, and/or 2023 TN Educator Survey.

Figure 13: Which of the following most influenced your plans to not teach in your school next year?



Note: Showing responses from a subset of 20 teachers in your district and 212 teachers in comparable districts who were randomly selected to answer additional questions about the teacher labor market on the 2021, 2022, and 2023 TN Educator Survey, combined.

Maximizing Current Talent

Tennessee has a growing number of students scoring in the lowest performance category on the ELA TCAP. This alarming trend makes it even more important that schools provide all students with effective teachers that are supported to continually improve. One of that ways that schools can achieve this is by modifying “traditional” school schedules and roles. School leaders can maximize staffing by offering upward mobility opportunities for excellent teachers and targeted support for novice teachers. As Tennessee districts use their remaining ESSER funds and transition to a ‘regular’ resource environment, there is an incredible opportunity to allocate money to support innovative staffing models.

Modifying school structures is not usually a small task. Questions to consider include:

- How can innovative schedules and teacher allocations make better use of existing talent?
- What gaps in knowledge, time, and funding, would be barriers to implementing innovative staffing models?
- What is your staffing mix, and how are each staffing types matched to district goals?

Strategies To Consider: There are programs and policies designed to address challenges school districts face in maximizing staffing. Some of these levers to address the teacher pipeline include:

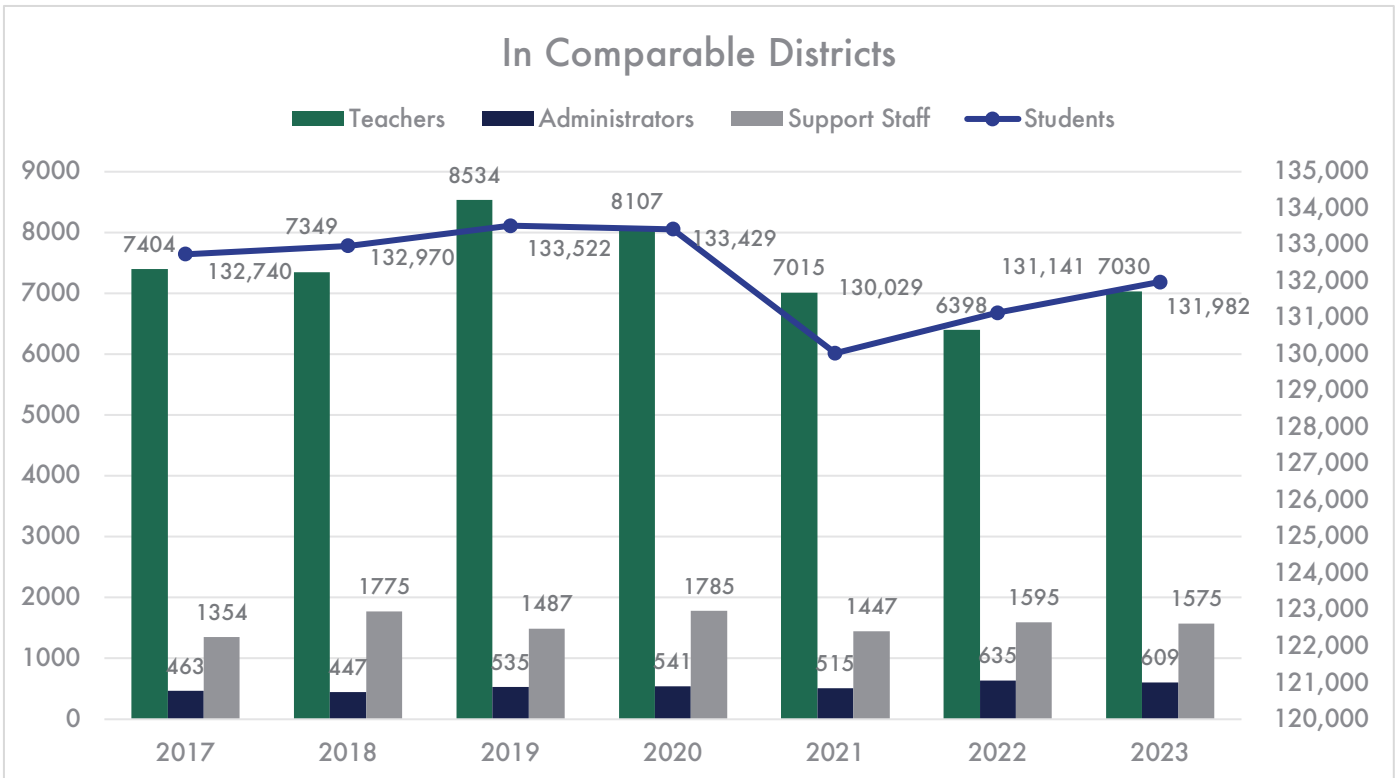
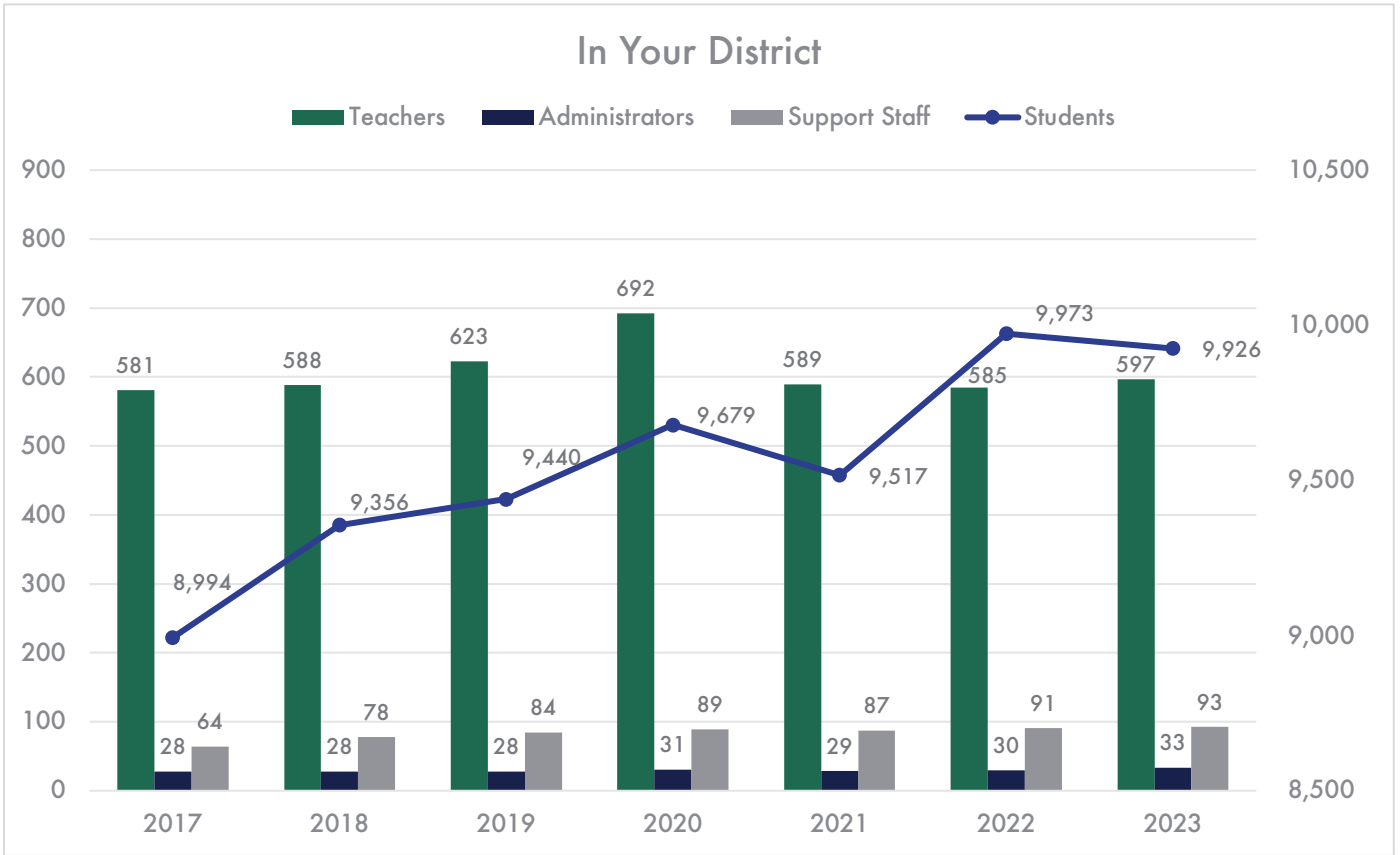
- Innovative staffing models, such as Opportunity Culture, expand the reach of the strongest educators and create opportunities for increased responsibilities and compensation. This is achieved by elevating the most effective teachers to a hybrid teaching and mentorship role, a multi-classroom leader (MCL), that allow strong teachers to remain in the classroom with a smaller student-roster, while coaching a small team of teachers. On average, MCLs are paid a stipend of 21% of their regular pay on top of their regular salaries.⁹ Innovative staffing models create a career ladder for teachers to progress to higher levels of responsibility and pay, without leaving the classroom.
- Teacher Residencies are programs that support teacher-candidates at the beginning of their career by providing mentorship and support through teaching certification. Residencies often hire newly certified teachers in their residency schools, creating a smoother on-ramp for new teachers.

For district leaders seeking immediate action steps, consider:

- Leveraging differentiated pay to award highly effective teachers with additional pay to support in the coaching and mentoring of early career teachers

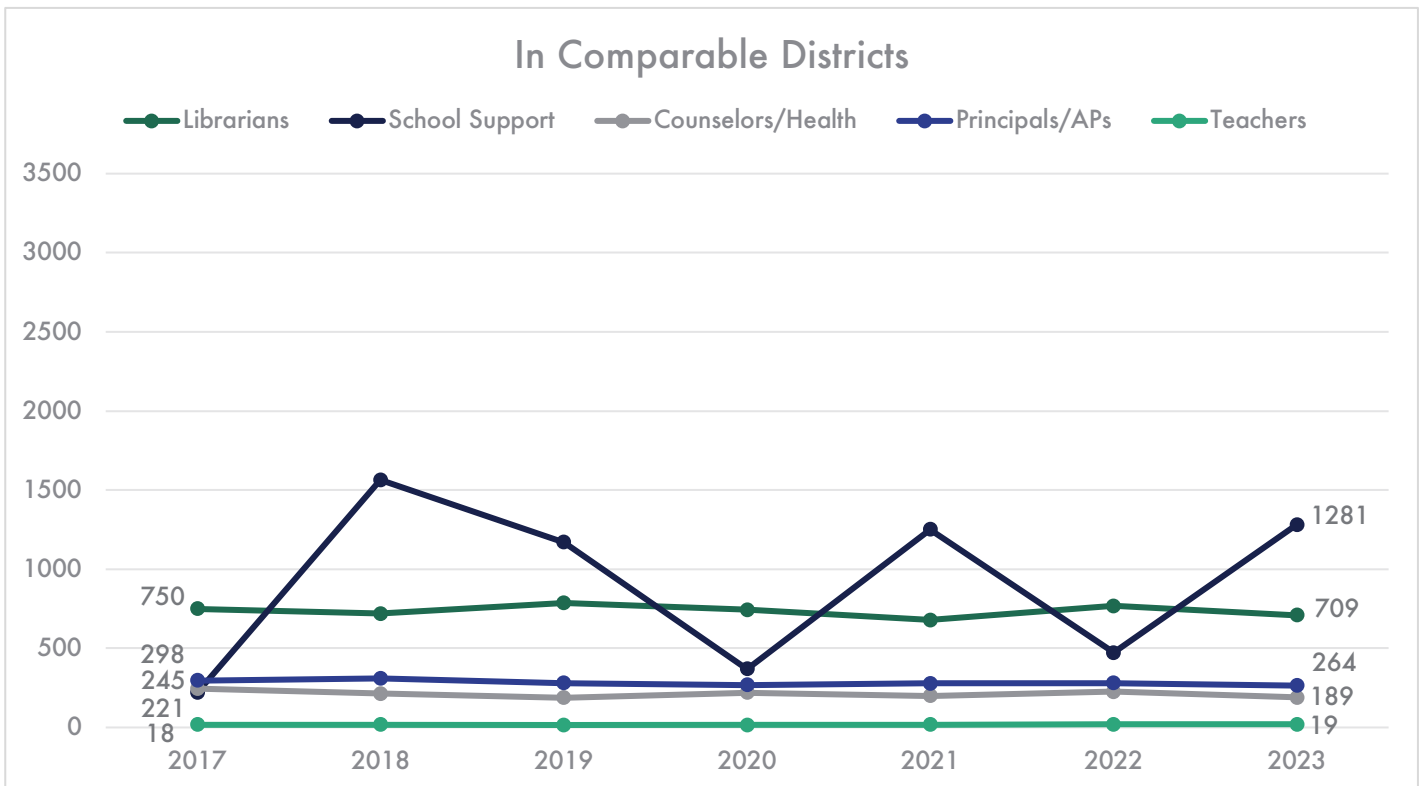
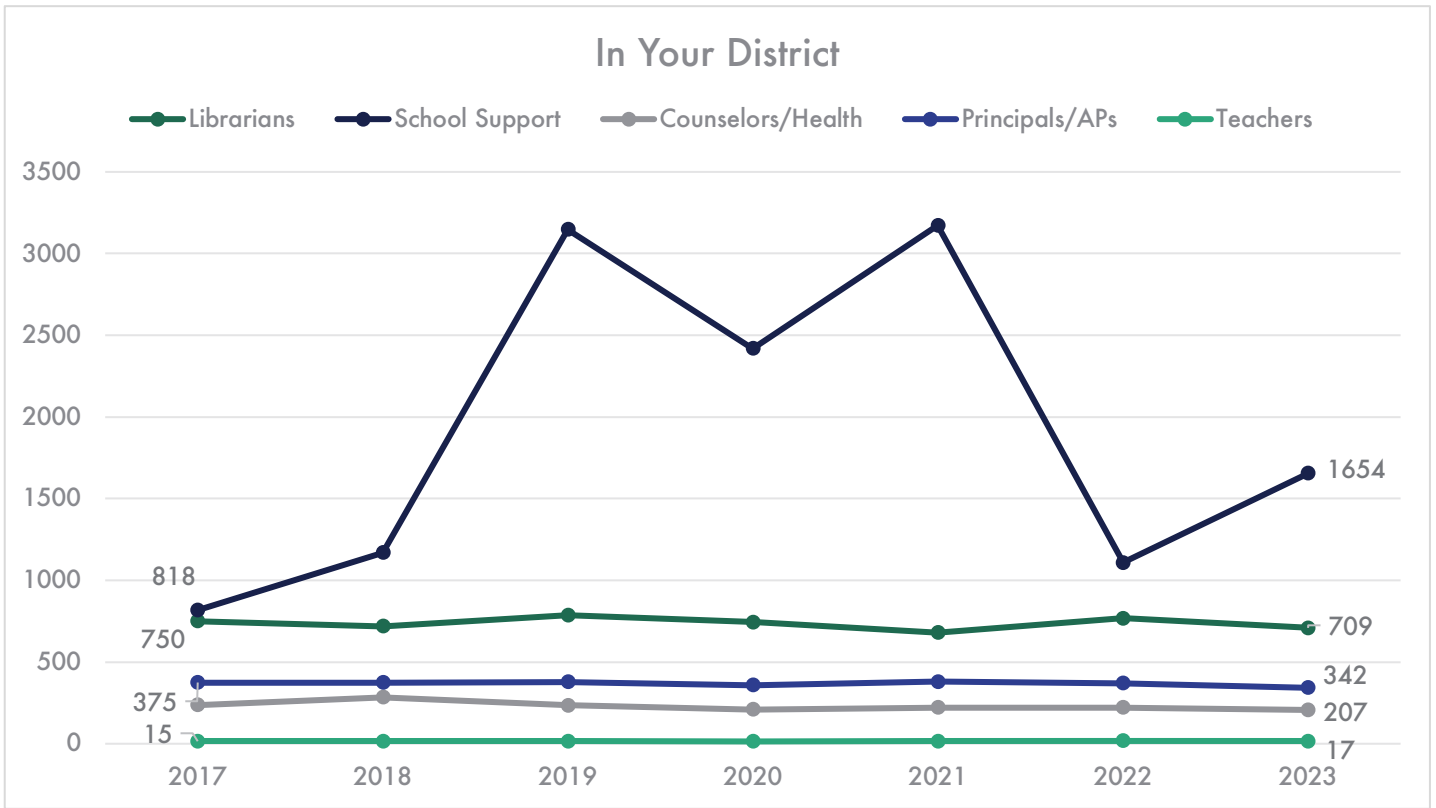
⁹ [Teacher Pay Supplements in Opportunity Culture Sites 2022–23](#)

Figure 14: Number of Students and Staff Over Time



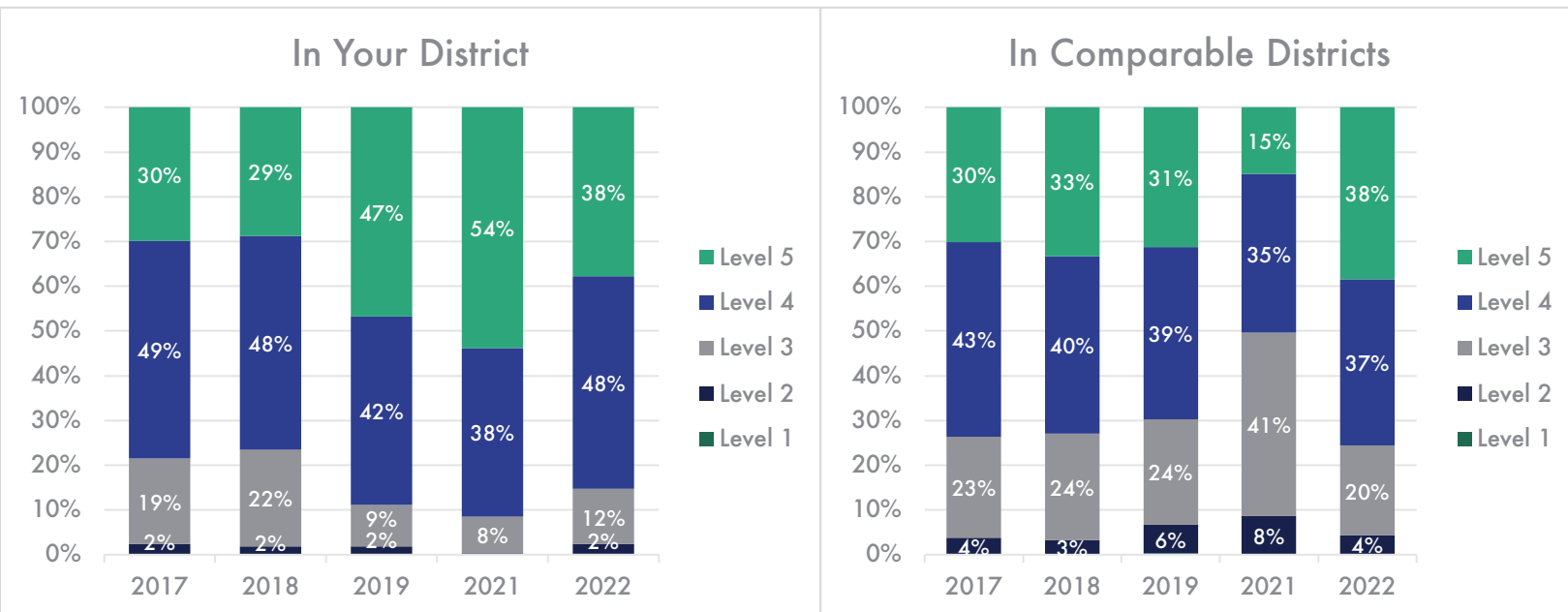
Note: Staffing categories determined by assignment labels in EIS.

Figure 15: Students Per Staff Member Ratio Over Time



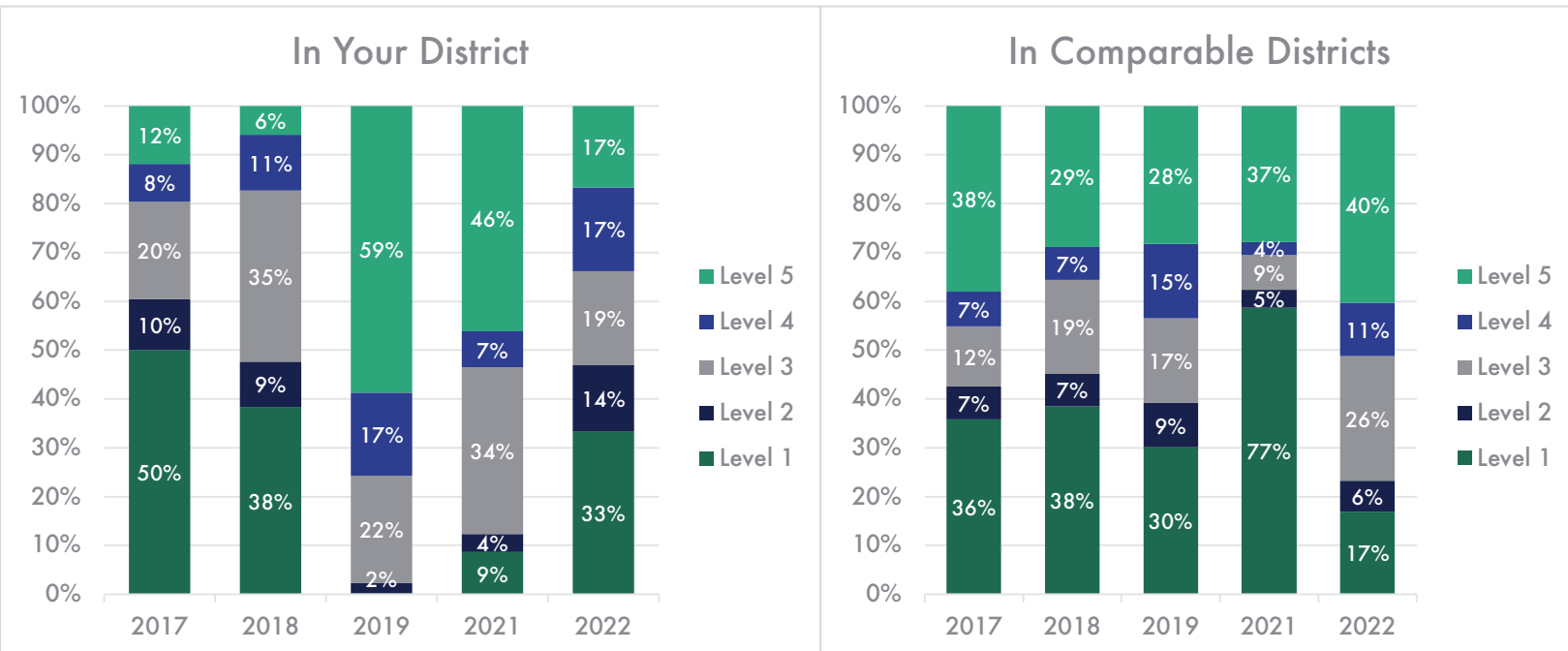
Note: Staffing categories determined by assignment labels in IES.

Figure 16: Percent of Teachers at Each Level of Overall Effectiveness (LOE) Over Time



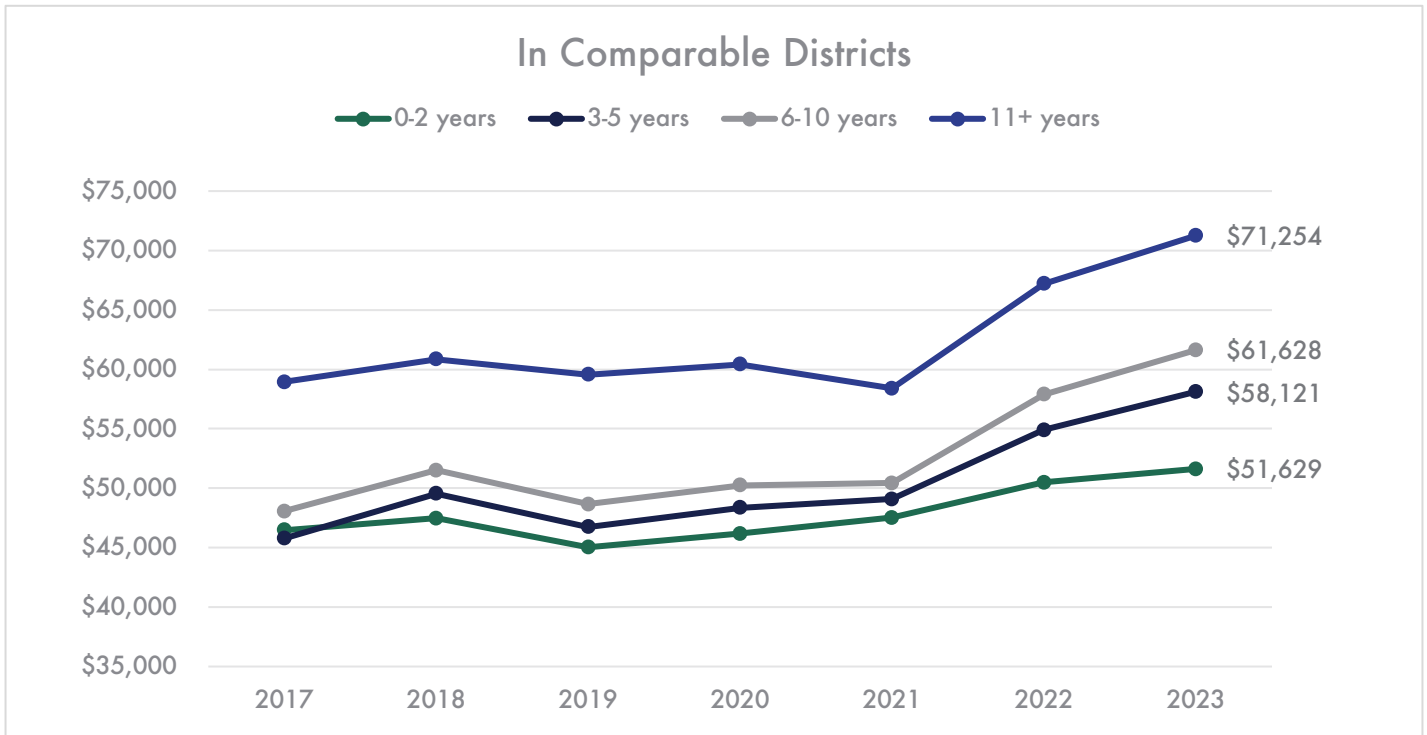
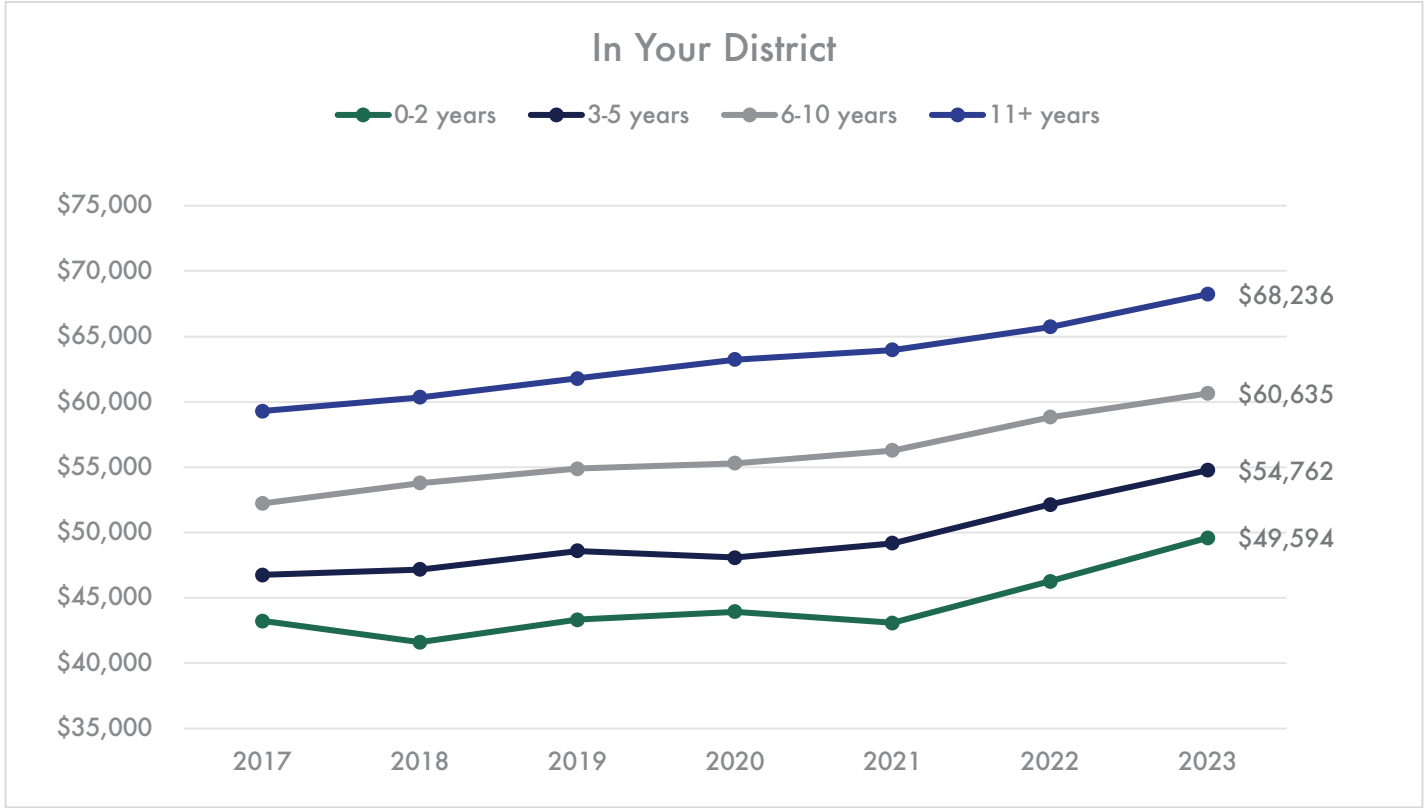
Note: LOE scores are provided by the TEAM Evaluation dataset. Not available for the 2019-20 school year.

Figure 17: Percent of Teachers at Each TVAAS Growth Score Over Time



Note: Growth scores are provided by the TEAM Evaluation dataset. Not available for the 2019-20 school year.

Figure 18: Average Teacher Salary by Experience Level Over Time



Note: Teacher salaries and years of experience are provided by EIS.

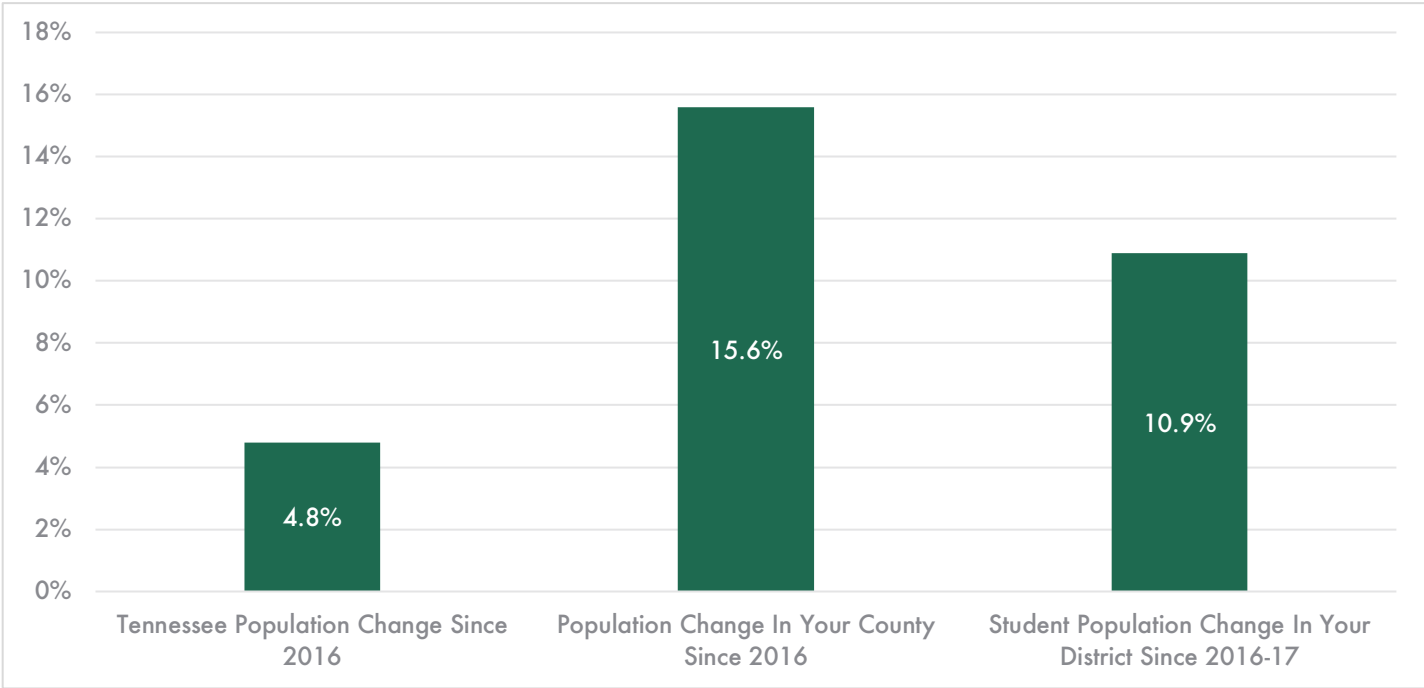
Education Industry in Community Context

The broader Education sector – including K-12 education, higher education, and others – is the fifth largest industry in Tennessee. In many Tennessee communities, the K-12 school district is among the community’s largest employers with large economic impacts.¹⁰ School systems need to be aware of their environments, the industries, average incomes, and demographics that make up their communities, so they will be better able to address staffing needs and prepare their students for life beyond high-school graduation.

There are many different pieces of understanding a community. Questions to consider include:

- Are there opportunities within your community to attract individuals that are missing from school-based roles?
- What impact do the population demographics and median income level have on your school district?
- What impact do the current workforce, median salary, and demographics in your district have on your surrounding county?

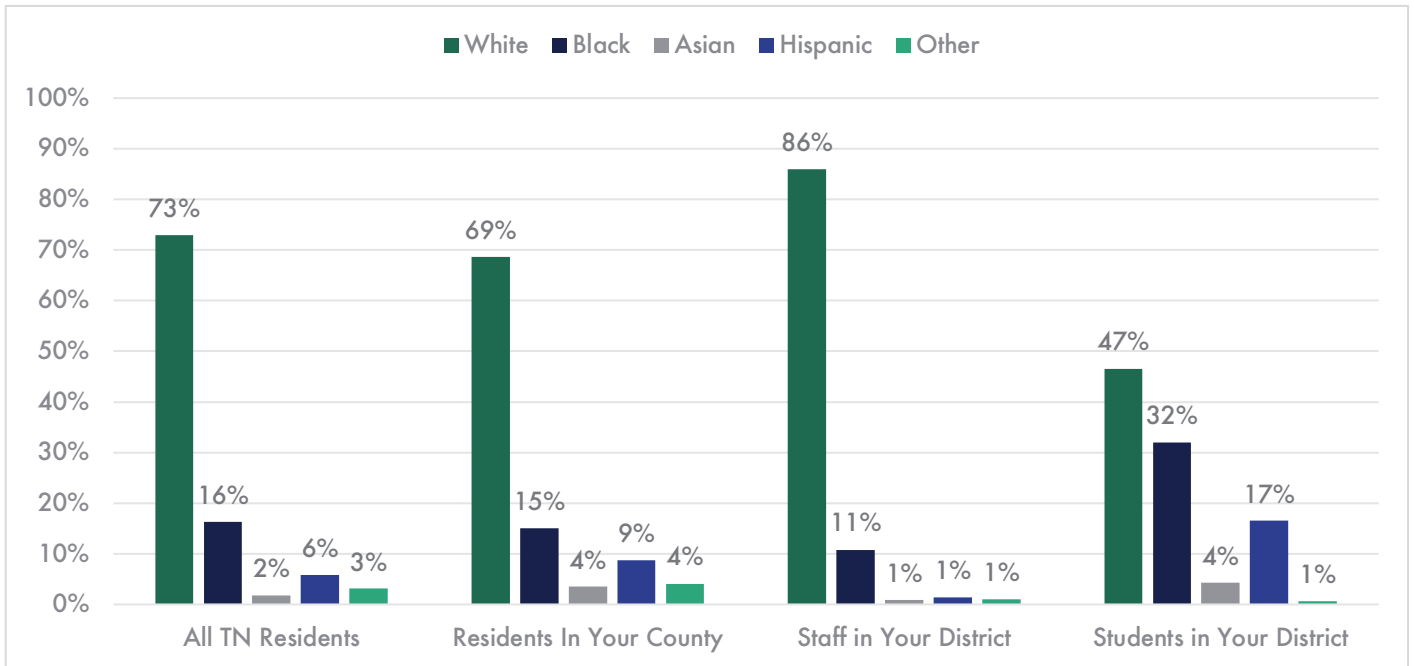
Figure 19: Residential and Student Population Change Over Time



Note: County and State residential population comes from the U.S. Census Bureau’s American Community Survey 5-Year estimates for 2012-2016 and 2017-2022. Student population comes from EIS Student Enrollment Files for the 2016-17 and 2021-22 school years.

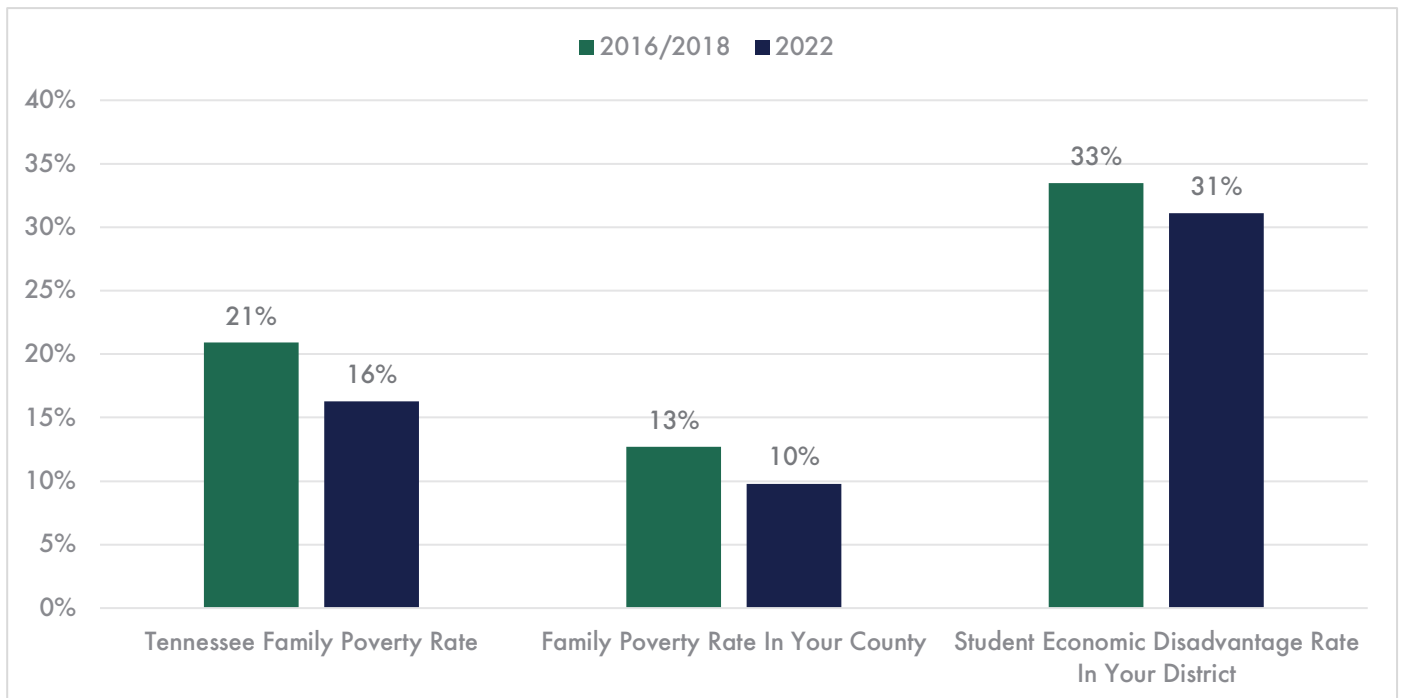
¹⁰ [Tennessee’s Economy, 2021-2022](#) – Tennessee Department of Labor and Workforce Development

Figure 20: Residential, Staff and Student Racial/Ethnic Demographics, 2022



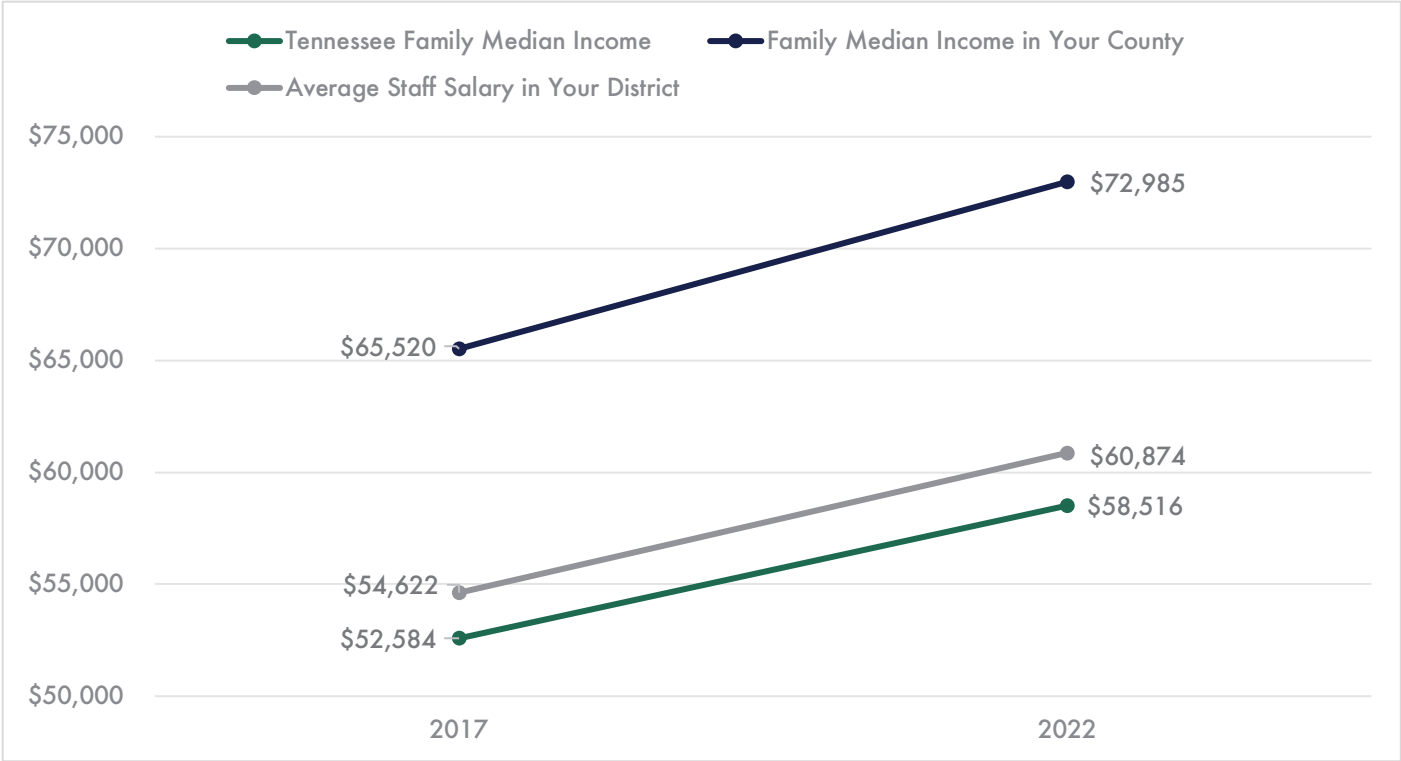
Note: County and State demographics come from the U.S. Census Bureau's American Community Survey 5-Year estimates for 2017-2022. Staff and student demographics come from EIS Student and Staff Demographic Files for the 2021-22 school years.

Figure 21: Family Poverty and Student Economic Disadvantage Over Time



Note: County and State poverty rates for families with children under 18 come from the U.S. Census Bureau's American Community Survey 5-Year estimates for 2012-2016 and 2017-2022. Student economic disadvantage comes from EIS Student Demographic Files for the 2017-18 (the first year economic disadvantage was used instead of free and reduced price lunch) and 2021-22 school years.

Figure 22: Family Median Income and Average Staff Salary Over Time



Note: County and state family median income comes from the U.S. Census Bureau's American Community Survey 5-Year estimates for 2012-2016 and 2017-2022. Average staff salary comes from EIS for the 2016-17 and 2021-22 school years.

Murfreesboro City Schools'
Proposed Differentiated Pay Plan 2024-2025

(All Bonuses will be prorated based on start dates)

*Items in red indicate new components for 2024-2025

Special Education Positions:

- New CDC/IPK Teacher Hiring/Retention Bonus = \$1,000 per semester (payable Aug. and Jan.)
- Existing CDC/IPK Teacher Retention Bonus= \$500 per semester (payable Jan. and July)
- BEST Teacher Retention Bonus = \$2,500 per semester (payable in Jan. and July)
- BEST EA Retention Bonus = \$500 per semester (payable in Jan. and July)

Certified Positions:

- 6th Grade Retention Bonus = \$500 per semester (payable in Jan. and July)
- **Student Teachers that complete residency II placements in 23-24 who sign a contract with MCS = \$500 per semester (payable in Aug. and Jan.)**

Classified Positions:

- New Bus Driver Sign-On Bonus = \$750 payable after 3 months of active employment or last day of school, whichever comes first.
- Bus Driver Retention Bonus = \$300 per semester (payable in Jan. and July)

Differentiated Pay Plans will apply to retired teachers returning to the classroom.

Referral Bonus: Referral bonus to any employee whose referral results in the hiring of an MCS employee or bus driver who stays actively employed with MCS for at least three months. Amount to be determined.