

ASHEBORO CITY BOARD OF EDUCATION

Special-Called Virtual Meeting

June 29, 2021

5:30 p.m.

I. Opening

- A. Call to Order
- B. Moment of Silence
- C. Pledge of Allegiance
- D.*Approval of Agenda

II. *Consent Agenda

- A. Personnel Transactions
- B. 2021-2022 School Fees
- C. Budget Amendment F-05
- D. Budget Transfer Report (for information only)
- E. Non-Competitive Procurement – Houghton Mifflin
- F. Non-Competitive Procurement – Curriculum Associates
- G. HES Custodial Services Contract

III. Action Items

- A. ESS Substitute Staff Placement Agreement – Ms. Sandra Spivey, Finance Officer

IV. Adjournment

*Item(s) requires action/approval by the Board of Education.

Asheboro City Schools Board of Education meetings are paperless. All information for the board meetings may be viewed at <http://www.asheboro.k12.nc.us> under Board of Education the Friday following the board meeting.

**Asheboro City Schools
Personnel Transactions
June 29, 2021**

***A. RESIGNATIONS/RETIREMENTS/SEPARATIONS**

LAST	FIRST	SCHOOL	SUBJECT	EFFECTIVE
Brooks	Vanessa	CO	Volunteer Coordinator (part-time)	6/30/2021
Phillips	John	AHS	Mathematics	8/1/2021
Pukerson	Donna	SAMS	English Language Arts	7/31/2021
Runnfeldt	Kristen	SAMS	Mathematics	8/1/2021

***B. APPOINTMENTS**

LAST	FIRST	SCHOOL	SUBJECT	EFFECTIVE
Allmon	Kady "Jade"	GBT	Third Grade	8/17/2021
Barker	Lauren	AHS	Agriscience	8/1/2021
Causey	Staci	ECDC	Pre-Kindergarten	8/9/2021
Fadonougbo	Vaneza	AHS	Science	8/9/2021
Greco	Karyn	SAMS	Exceptional Children	8/17/2021
Harward	Dena	ECDC	Pre-Kindergarten	8/9/2021
Kosel	Daniel	SAMS	CTE Business/Technology	8/9/2021
Latham	Mary "Faith"	DLL	Elementary (grade level TBD)	8/9/2021
Sell	Brock	GBT	Exceptional Children	8/9/2021

C. TRANSFERS

LAST	FIRST	SCHOOL	SUBJECT	EFFECTIVE
Young	Karen	CWM to LP	Kindergarten	8/17/2021

**ASHEBORO CITY SCHOOLS
CERTIFIED APPOINTMENTS
June 29, 2021**

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Allmon, Kady "Jade"	Western Carolina University B: Recreational Therapy	Elementary K-6

Ms. Jade Allmon is recommended to teach third grade at Guy B. Teachey Elementary School for the 2021-2022 school year. Ms. Allmon completed her first year of teaching in second grade at Thomasville Primary School, where she earned the distinction of Beginning Teacher of the Year. Ms. Allmon is described as enthusiastic, organized and a good planner. She establishes strong relationships with students and families, and is eager to continue learning and growing as an educator. Ms. Allmon is a product of Asheboro City Schools and is excited to continue her teaching career in her home town. Welcome Ms. Allmon!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Barker, Lauren	North Carolina State University B: Agriculture and Extension Education Services	9-12 Agri-Science

Ms. Lauren Barker is recommended to teach Agriculture Science at Asheboro High School for the 2021-2022 school year. Ms. Barker completed her student teaching at Wakefield High School in Raleigh, where she focused on immersive activities for student engagement. During the spring of 2021, Ms. Barker served as a long-term substitute teacher at Asheboro High School. She demonstrated her creativity and dedication to student learning with students both in-person and remotely to ensure their success. Ms. Barker looks forward to sharing her passion for animals and the environment with her students at the AHS Zoo School campus. Welcome Ms. Barker!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Causey, Staci	East Carolina University B: Management of Recreation Facilities and Services C: B-K add-on certification	Birth - Kindergarten

Ms. Staci Causey is recommended for the position of Pre-Kindergarten Teacher at our Early Childhood Development Center for the 2021-2022 school year. Ms. Causey began her career with Asheboro City Schools in 2009, where she worked as an Instructional Assistant at Charles W. McCrary Elementary School. She then moved to the Early Childhood Development Center where she further developed her love for the pre-K setting. In 2014 she completed her student teaching and is excited to have the opportunity to begin her role as a teacher in the school she loves. Welcome to your new role as classroom teacher Ms. Causey!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Fadonougbo, Vaneza	Winston Salem State University B: Social Work Grand Canyon University M: Education	9-12 Science

Ms. Vaneza Fadonougbo is recommended to teach Science at Asheboro High School for the 2021-2022 school year. Ms. Fadonougbo has experience teaching internationally at Huishi International School in Shanghai China, where she served students for two years and most recently at The American Baccalaureate School in Kuwait. She is passionate about education and dedicated to providing all students with a positive, supportive learning environment. Ms. Fadonougbo is excited to begin her US teaching career in Asheboro City Schools. Welcome Ms. Fadonougbo!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Greco, Karyn	Kean University B: Exceptional Children	Exceptional Children K-12

Ms. Karyn Greco is recommended for the position of Exceptional Children's Teacher at South Asheboro Middle School for the 2021-2022 school year. She has taught the last 17 years in Moore County Schools. Ms. Greco holds certifications in Exceptional Children's English, Social Studies, Science, and Mathematics. She strives to teach socially acceptable behaviors and inclusion using a variety of innovative techniques. As a veteran Exceptional Children's teacher, she has a passion to help and guide children with special needs to have the same opportunities as their non-disabled peers. Welcome Ms. Greco!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Harward, Dena	UNC-Greensboro B: Birth to Kindergarten Education M: Interdisciplinary Studies in Early Childhood	Birth – Kindergarten

Ms. Dena Harward is recommended to teach Pre-Kindergarten at the Early Childhood Development Center for the 2021-2022 school year. Ms. Harward has been an NC Pre-K teacher at Head Start since 2008. She is described as creative and establishes strong relationships with the students and families she serves. Ms. Harward has experience with outdoor learning environments and fostering student curiosity through hands-on activities. She completed her student teaching with Ms. Funkhouser at the Early Childhood Development Center and looks forward to beginning her public school teaching career at this location. Welcome Ms. Harward!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Kosel, Daniel	University of NC – Greensboro B: Music Education	6-12 Music CTE Business/Technology

Mr. Daniel Kosel is recommended to teach CTE Business/Technology at South Asheboro Middle School for the 2021-2022 school year. He previously taught chorus at Southwestern Randolph High School, followed by Northern Guilford Middle School in Greensboro. Most recently Mr. Kosel has served as a long-term substitute for Asheboro City Schools while working as a web designer

and completed his Associates of Applied Science in web development at Guilford Technical Community College. Mr. Kosel also served three years as the music director for Randolph Summer Vacation Playhouse. We are happy to welcome him in this new role. Welcome Mr. Kosel!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Latham, Mary "Faith"	UNC – Greensboro B: Psychology	Elementary K-6

Ms. Mary "Faith" Latham is recommended to teach at Donna Lee Loflin Elementary School for the coming school year. A recent graduate of UNCG, she earned a degree in Psychology and minored in Human Development and Family Studies. Ms. Latham sees working with children as a calling and feels that even just one person can make a substantial impact on the life of a child, and she strives to be that person. She is excited to begin her teaching career in Asheboro City Schools. Welcome Ms. Latham!

<u>NAME</u>	<u>COLLEGE/DEGREE</u>	<u>LICENSURE</u>
Sell, Brock	Bethel College B: Intercultural Studies	Exceptional Children

Mr. Brock Sell is recommended to teach Exceptional Children Extended Content at Guy B. Teachey for the 2021-2022 school year. Mr. Sell is relocating to Asheboro from La Porte, Indiana where he worked at La Porte Community Schools Corporation as an instructional assistant. He executed individual lesson plans for students on the autism spectrum, taught life skills, and worked with the teacher of record to modify Individual Education Plan (IEP) goals for students. He also has a minor in Teaching English to Speakers of Other Languages (TESOL). Mr. Sell is excited to begin his teaching career in Asheboro City Schools. Welcome Mr. Sell!

Budget Amendment
 Asheboro City Schools Administrative Unit
 Federal Funds

The Asheboro City Board of Education at a special called meeting on the 29th day of June, 2021, passed the following resolution.

Be it resolved that the following amendment be made to the budget resolution for the fiscal year ending June 30, 2021.

<u>REVENUE</u>		
3.3600.178	ESSER II - Competency Based Assessment	\$ <u>26,771.00</u>
		\$ <u><u>26,771.00</u></u>
 <u>EXPENDITURE</u>		
3.5860.178	Instructional Technology Services	\$ <u>26,771.00</u>
		\$ <u><u>26,771.00</u></u>
Total Appropriation in Current Budget		\$ 16,305,265.18
Total Increase/Decrease of above amendment		<u>26,771.00</u>
Total Appropriation in Current Amended Budget		\$ <u><u>16,332,036.18</u></u>

Passed by majority vote of the Board of Education of Asheboro City on the 29th day of June, 2021.

Chairman, Board of Education

Secretary

**Asheboro City Schools
Budget Transfer Report
Information Only
2020-2021**

Fiscal Period	Fund	Purpose	Description	Sum of Amount
6	1	5100	Regular Instructional Services	\$ 378,011.00
	1	5200	Special Populations Services	\$ (73,884.00)
	1	5800	School-Based Support Services	\$ (13,210.00)
	1	6500	Operational Support Services	\$ (81,890.00)
	1	7200	Nutrition Services	\$ (209,027.00)
<hr/>				
9	3	5300	Alternative Programs and Services	\$ 86.01
	3	5800	School-Based Support Services	\$ 0.10
	3	8100	Payments to Other Governmental Units	\$ (1,680.80)
	3	8200	Unbudgeted Funds	\$ 1,594.69
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10	3	5100		\$ 30,075.09
	3	5200		\$ 57,296.01
	3	5300		\$ 13,868.38
	3	5800		\$ (47,095.34)
	3	6200		\$ (18,175.06)
	3	6500		\$ (39,234.90)
	3	8100		\$ 3,265.82
<hr/>				
11	1	5100		\$ (237,231.31)
	1	5200		\$ (23,401.74)
	1	5300		\$ 19,516.96
	1	5400		\$ 210,047.17
	1	5800		\$ 79,257.33
	1	6100		\$ 106,388.54
	1	6400		\$ 33.00
	1	6500		\$ (154,609.95)
	3	5100		\$ (217,917.05)
	3	5200		\$ 88,677.80
	3	5300		\$ (38,953.25)
	3	5800		\$ (12,525.49)
	3	6400		\$ 19,106.20
	3	6500		\$ (388.21)
	3	7200		\$ 162,000.00

**Asheboro City Schools
Budget Transfer Report
Information Only
2020-2021**

Fiscal Period	Fund	Purpose	Description	Sum of Amount
12	1	5100		\$ (655,024.15)
	1	5200		\$ 119,399.90
	1	5300		\$ 10,937.63
	1	5400		\$ 239,235.11
	1	5800		\$ 21,788.73
	1	6100		\$ 5,174.44
	1	6300		\$ 530.36
	1	6400		\$ 63,714.59
	1	6500		\$ (205,764.00)
	1	6600		\$ 230,212.09
	1	6700		\$ 57,584.48
	1	6800		\$ 11,445.52
	1	6900		\$ 100,765.30
	3	5100		\$ (2,642,758.99)
	3	5200		\$ (17,750.00)
	3	5300		\$ 1,723,329.90
	3	5400		\$ 35,949.00
	3	5800		\$ 114,173.73
	3	6100		\$ 237,074.11
	3	6400		\$ 114,398.80
	3	6500		\$ 226,961.50
	3	7200		\$ 26,961.50
	3	8100		\$ 245,644.67
	3	8200		\$ (63,984.22)



PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION Eric C. Davis, Chairman

DEPARTMENT OF PUBLIC INSTRUCTION Mark Johnson, Superintendent of Public Instruction

WWW.DPI.NC.GOV

TO Sandra Spivey, Finance Officer
Asheboro City Schools-761

FROM Krystie Terry, Procurement Specialist
NC Department of Public Instruction

DATE June 18, 2021

APPROVAL OF REQUEST FOR AUTHORIZATION OF NONCOMPETITIVE PROCUREMENT PROPOSAL – Houghton Mifflin Harcourt

As the pass-through entity for programs authorized under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA), the North Carolina Department of Public Instruction (DPI) may waive competitive procurement requirements for funding from authorized grant programs in accordance with Uniform Guidance §200.320 (2 CFR §200.320(f)(3)).

Based on information provided by Asheboro City Schools, the Federal Program Monitoring and Support (FPMS) Division and the Monitoring and Compliance section approves the request for authorization of the noncompetitive proposal for the vendor **Houghton Mifflin Harcourt** for the period of availability of grant funds used to obtain this procurement. This was approved for Asheboro City Schools for Curriculum Continuity. The expected cost of this contract is \$30,250.00 and is related to ESSER II PRC (171).

Note that all procurements, including sole source procurements, must comply with the general procurement standards identified in Uniform Guidance §200.318 (2 CFR §200.318) and be adequately documented for potential review by auditors and/or monitors.

If you need additional information, please contact me (Krystie.Terry@dpi.nc.gov) or your Federal Program Administrator.

c: Tina Letchworth- Assistant Director – Federal Program Monitoring & Support Division

**NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION
MONITORING AND COMPLIANCE SECTION**

6301 Mail Service Center, Raleigh, North Carolina 27699-6301

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FEDERAL FUNDS NONCOMPETITIVE PROCUREMENT REQUEST

Submit the completed form via email to ProcurementWaiversTeam@dpi.nc.gov (attach any additional documentation). One request must be submitted for each individual issue (e.g., one email / request per vendor); they cannot be combined.

LEA Name and Unit Number: Asheboro City Schools, 761
Name and Title of Individual Submitting Request: Dr. Wendy Rich, Assistant Superintendent of Curriculum and Instruction
Vendor Name: Houghton Mifflin Harcourt
Federal Funding Source (including PRC): ESSER II funds (PRC 171)
Scope of Work: Do The Math is designed to help teachers develop the foundations of mathematical understanding for all students. It focuses on understanding and skills with whole numbers and fractions in order to build or rebuild critical foundations. With scaffolded instruction, students progress from the basics to more complex operational work, while learning, processing, and deepening understanding at an appropriate pace. Do The Math features eight classroom-tested instructional practices for struggling students: teaching for understanding, scaffolded content, multiple strategies, mathematical thinking, classroom routines, independent student work, vocabulary and language, and assessment and differentiation. These practices facilitate differentiation to meet the needs of every student. Do The Math focuses on building an understanding of Number & Operations, the cornerstone of elementary math, and organizes instruction into four topics: Addition & Subtraction, Multiplication, Division, and Fractions. Modules support small group and whole group instruction, and can be implemented at any grade level, allowing for flexibility as students begin where they need support. Topics build from basic conceptual understanding to skills development and applications with larger numbers
Deliverables: These resources provide our schools with: -systematic lessons on key foundational number and fractions skills -research based instructional strategies with careful scaffolding of the mathematics content -classroom routines that promote engagement and deepen student understanding -visual representations and corresponding manipulatives to model the mathematics -teacher guidance 'speech bubbles' to talk students through modeling, reasoning, and asking mathematic questions
Cost: \$30,250

<p>Noncompetitive Justification: Select one or more of the procurement policy provisions below that best describes the exception to the Uniform Guidance bidding requirements for procuring goods or services valued \$10,000 or greater with federal funds.</p>	
	<p>Inadequate Competition: After solicitation of a number of potential sources, competition is determined to be inadequate. Bids were solicited and, no responsive bid is received, or only a single responsive bid is received and is rejected. Provide a copy of RFP or informal bid request, non-responsive answers, and, if one bid was received copy of the bid and reason for why it was rejected.</p>
	<p>Public Exigency: When life, safety or health of the public must be sustained through the immediate delivery of products or performance of services or a critical agency mandate, statutory or operational requirement must be fulfilled immediately. Please use the “other” box below to provide a narrative to support the selection of this justification.</p>
	<p>Highly Specialized Professional Services: The procurement of professional services should be conducted through a bid process, the requesting unit can demonstrate that such services, due to unique or special circumstances, can’t be procured in this manner. A resume or other details about the unique qualifications of this supplier must be attached. In addition, please use the “other” box below to provide a narrative to support the selection of this justification.</p>
	<p>Highly Specialized Technical Services: Another supplier cannot be chosen because the supplier provides services in connection with the assembly, installation or servicing of equipment of a highly technical or specialized nature. In addition, please use the “other” box below to provide a narrative to support the selection of this justification.</p>
	<p>Proprietary Software / Hardware: The requested upgrade to proprietary software or hardware is available only from this supplier, which performs the service only on a direct basis. Attach documentation supporting that the hardware or software is proprietary and that only this supplier and can perform the requested upgrade.</p>
	<p>Equipment Continuity: The requesting unit seeks equipment that must be compatible with existing equipment and/or standardizing on equipment which is necessary to assure interchangeability of parts. Please use the “other” box below to provide a narrative to support the selection of this justification.</p>
X	<p>Curriculum Continuity: The requesting unit seeks curriculum that must be compatible with existing materials. Please provide a narrative in the “other” box below to explain how the existing materials are compatible with the requested material/services and how putting out for bid would cause a financial or significant hardship. You must also demonstrate that the Supplement vs Supplant compliance is being met for existing materials.</p>
	<p>Amendment/Change Order: Requests, not covered under existing contract, where current supplier is best positioned based on skill, knowledge, familiarity with the project to provide the extra work resulting in a cost savings to the unit over the cost of a new supplier. This also includes amendments that result in an extension of the term due to the successor contract or bidding process being incomplete prior to expiration of the current contract.</p>

Other (Please Explain in Detail):

Our district is making a great effort to find and fill gaps in our instructional materials so that students who need all levels of support can get what they need. We realized that we were missing materials that could be used at any level K-8 to fill in gaps in number and fractions for mathematics. The Do the Math intervention materials fill that void for us, provide us with a cohesive program we can use across many grades, align to our curriculum maps and other curricular resources, align to the student centered mathematics approach that we value as a district, and yet make the concepts explicit for students.



PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION Eric C. Davis, Chairman

DEPARTMENT OF PUBLIC INSTRUCTION Mark Johnson, Superintendent of Public Instruction

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TO Mackenzie Palmer-Senior Accountant
Asheboro City Schools-761

FROM Krystie Terry, Procurement Specialist
NC Department of Public Instruction

DATE May 18, 2021

APPROVAL OF REQUEST FOR AUTHORIZATION OF NONCOMPETITIVE PROCUREMENT PROPOSAL – Curriculum Associates

As the pass-through entity for programs authorized under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA), the North Carolina Department of Public Instruction (DPI) may waive competitive procurement requirements for funding from authorized grant programs in accordance with Uniform Guidance §200.320 (2 CFR §200.320(f)(3)).

Based on information provided by Asheboro City Schools, the Federal Program Monitoring and Support (FPMS) Division and the Monitoring and Compliance section approves the request for authorization of the noncompetitive proposal for the vendor Curriculum Associates for the period of availability of grant funds used to obtain this procurement. This was approved for Asheboro City Schools for Curriculum Continuity. The expected cost of this contract is \$150,000.00 and is related to ESSER III PRC (181).

Note that all procurements, including sole source procurements, must comply with the general procurement standards identified in Uniform Guidance §200.318 (2 CFR §200.318) and be adequately documented for potential review by auditors and/or monitors.

If you need additional information, please contact me (Krystie.Terry@dpi.nc.gov) or your Federal Program Administrator.

c: Tina Letchworth- Assistant Director – Federal Program Monitoring & Support Division

**NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION
MONITORING AND COMPLIANCE SECTION**

6301 Mail Service Center, Raleigh, North Carolina 27699-6301

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FEDERAL FUNDS NONCOMPETITIVE PROCUREMENT REQUEST

Submit the completed form via email to LeighAnn.Kerr@dpi.nc.gov (attach any additional documentation). One request must be submitted for each individual issue (e.g., one email / request per vendor); they cannot be combined.

LEA Name and Unit Number:
Name and Title of Individual Submitting Request:
Vendor Name:
Federal Funding Source (including PRC):
Scope of Work:
Deliverables:
Cost:

Noncompetitive Justification: Select one or more of the procurement policy provisions below that best describes the exception to the Uniform Guidance bidding requirements for procuring goods or services valued \$10,000 or greater with federal funds.

Inadequate Competition: After solicitation of a number of potential sources, competition is determined to be inadequate. Bids were solicited and, no responsive bid is received, or only a single responsive bid is received and is rejected. Provide a copy of RFP or informal bid request, non-responsive answers, and, if one bid was received copy of the bid and reason for why it was rejected.

Public Exigency: When life, safety or health of the public must be sustained through the immediate delivery of products or performance of services or a critical agency mandate, statutory or operational requirement must be fulfilled immediately.

Highly Specialized Professional Services: The procurement of professional services should be conducted through a bid process, the requesting unit can demonstrate that such services, due to unique or special circumstances, can't be procured in this manner. A resume or other details about the unique qualifications of this supplier must be attached.

Highly Specialized Technical Services: Another supplier cannot be chosen because the supplier provides services in connection with the assembly, installation or servicing of equipment of a highly technical or specialized nature.

Proprietary Software / Hardware: The requested upgrade to proprietary software or hardware is available only from this supplier, which performs the service only on a direct basis. Attach documentation supporting that the hardware or software is proprietary and that only this supplier and can perform the requested upgrade.

Equipment Continuity: The requesting unit seeks equipment that must be compatible with existing equipment and/or standardizing on equipment which is necessary to assure interchangeability of parts.

Curriculum Continuity: The requesting unit seeks curriculum that must be compatible with existing materials.

Amendment/Change Order: Requests, not covered under existing contract, where current supplier is best positioned based on skill, knowledge, familiarity with the project to provide the extra work resulting in a cost savings to the unit over the cost of a new supplier. This also includes amendments that result in an extension of the term due to the successor contract or bidding process being incomplete prior to expiration of the current contract.

Other (Please Explain in Detail):

Services Agreement

Dated June 29, 2021, by and between Asheboro City Schools (hereinafter referred to as "Customer") and **HES Facilities, LLC.** (hereinafter referred to as "Company").

RECITALS

Company is prepared to provide agreed upon custodial services to Customer as requested by Customer.

Customer is prepared to contract with Company for the performance of agreed upon services to be performed on Customer's premises and within Customer's facilities.

In consideration of the mutual agreements and understandings below, both parties agree as follows:

AGREEMENT

1. Services to be Provided: Company will provide custodial services (hereinafter referred to as "Services") according to the specifications set forth in **RFP 147 Custodial Serv.** designated by the Customer.

LIST OF FACILITIES

Asheboro High School 1221 South Park Street Asheboro, NC 27203
Balfour Elementary School 2097 North Asheboro School Road Asheboro, NC 27203
Central Office 112 South Park Street Asheboro, NC 27203
Early Childhood Development Center 1738 North Fayetteville Street Asheboro, NC
Lindley Park Elementary School 312 Cliff Road Asheboro, NC 27203
Donna Lee Loflin Elementary School 405 South Park Street Asheboro, NC 27203
Charles W. McCrary Elementary School 400 Ross Street Asheboro, NC 27203
North Asheboro Middle School 1861 North Asheboro Middle School Rd. 27203
South Asheboro Middle School 523 West Walker Avenue Asheboro, NC 27203
Guy B. Teachey Elementary School 295 Newbern Avenue Asheboro, NC 27203
Zoo School 4401 Zoo Parkway Asheboro, NC 27205

The terms of said RFP are incorporated herein by reference. In the event of a conflict between the terms of the RFP and the provisions of the terms set forth in this instrument, then the terms of this instrument shall prevail.

2. Consideration:

- A. Annual Contract Price: The annual contract price for the first year, beginning August 1, 2021, shall be \$418,901.51 Dollars (\$).
- B. Monthly Contract Pricing: The monthly contract price shall be \$34,908.46 Dollars (\$).
- C. As Customer's full-time employees, or full-time equivalency positions ("FTE") leave the Customer's employment for any reason, Company will add an FTE to Company's payroll for \$29,712/year. In the event the costs covered by the \$29,712/year either increase or decrease the annual price adjustment will do the same. The Contract will be amended to reflect such increase or decrease every time the Company adds an FTE to its payroll.
- D. Allow Asheboro City Schools (Customer) to request additional facilities and facility services, such as building maintenance, and grounds services from Company. Contract price and the Monthly Payments shall be negotiated by the Customer and Company for such services and added to the existing contract. Such changes will take effect on the date of the change in services.

- E. Monthly Invoices: Monthly Invoices will be billed at the beginning of the month in which the Services are to be rendered. Additional Services requested and approved by Customer will be invoiced at the beginning of each month for such Services provided during the prior month. Monthly Payments shall be made within fifteen (15) days from the date of invoice.
- F. Payment Terms: The Customer shall pay the Company upon receipt of invoice via an ACH Debit initiated by Company. If the Customer is unable to provide an ACH initiated by Company, the Customer can elect to provide an ACH or wire transfer or mail delivered to an address provided by Company. Payment not received within fifteen (15) business days after receipt of invoice will be subject to a \$25.00 late fee and 1% per month service charge.
- E. Contract Price Adjustments: The Contract Price may, with Customer approval, be adjusted as follows:
- i. Change in Services and Additional Facilities: Should Customer request a change in Services for reason of opening new units or buildings or permanent closings of units or buildings or a change tasks or frequencies to be performed or a significant change in the activity or use of Customer's Facility, and should such change result in a change of costs to Company, the Contract Price and the Monthly Payments shall be changed by the projected change in costs to Company, such changes taking effect from the date of the change in Services.
 - ii. CPI Increase: For multi-year Agreements or whenever this Agreement is extended, the Contract Price will be modified to reflect a cost of living adjustment equal to the greater of 2% or the applicable consumer price index rate for the preceding twelve months.
 - iii. Collective Bargaining: In the event of any increases in wages for Company's employees providing the Services as a result of any collective bargaining by such employees or contained in any collective bargaining agreement governing such employees, the Contract Price shall be changed by the projected change in costs to Company from the date of such change in wages and/or benefits. In the event, Customer does not agree to such change in wages and/or benefits, Customer or Company may cancel this Agreement upon thirty (30) days' written notice to the other party.
 - iv. Changes in Mandated Benefit Costs, Minimum Wages, Taxes or Other Employee Costs: In the event of a change in Federal, State, or Local Mandated Benefits, including, but not limited to: healthcare costs, paid sick time costs, paid leave costs, the Contract Price shall be changed by the actual change in the costs to Company. In the event of a change in the Federal, State, or Local minimum wage rates applicable to any of Company's employees, the labor cost portion of the Contract Price shall be changed by the percentage increase in the minimum wage rates. In the event of a change in social security taxes or the Federal or State unemployment taxes, or the imposition of new Federal, State or Local payroll or service taxes applicable to any of Company's employees or services provided by Company, the Contract Price shall be changed by the actual change in costs to Company. Any such changes shall be effective from the date such cost changes went into effect.
 - v. Office Space and related Costs: Customer agrees, at no cost to Company provide suitable office, office furnishings and secure equipment storage space at Customer's facility. The costs of utilities and electric power used by Company to accomplish the Services will be borne by Customer. The Customer pays the cost of copier use, internal Customer e-mail use, local telephone service and internal Customer telephone service, the cost of all restroom and other supplies (including paper, plastic and other miscellaneous consumables). Customer pays all costs related to waste removal and disposal from Customer's facility. The cost of waste containers, compacters, bins, cans, bailers, shredders, dumpsters and related

receptacles used to temporarily store or process waste at Customer's facility.

3. Term and Termination of Agreement:

- A. **Initial Term:** Pursuant to the terms of the RFP, this contract is a five (5) year contract with annual terms. The first annual term shall begin August 1, 2021 and end June 30, 2022. ("Initial Term") Each of the four (4) additional contract years shall be twelve (12) month terms ("Renewal Term"). Thereafter, the Agreement shall automatically renew on a yearly basis unless either party provides written notice of termination at least one hundred twenty (120) days prior to the end of the fiscal school year.
- B. **Termination for Unsatisfactory Service:** If, in the sole reasonable opinion of Customer, Company is not performing the Services in accordance with the requirements of this Agreement, and Customer desires to terminate this Agreement, Customer must give Company thirty (30) days written notice of its intention to terminate this Agreement if such service deficiencies are not corrected within that time (the "Cure Period"), which notice shall specify the service areas in question. On or before the end of the thirty (30) day Cure Period, Customer shall reasonably determine that either (i) the service deficiencies have been corrected, in which case the Agreement will continue in full force and effect subsequent to the Cure Period, or (ii) the service deficiencies have not been corrected, in which event Customer may, by further written notice, terminate this Agreement sixty (60) days from the end of the Cure Period. In the event that Customer does not act pursuant to either (i) or (ii) above, the service deficiencies shall be deemed corrected and the Agreement shall continue in full force and effect thereafter.

4. Insurance:

- A. **Insurance to be carried by Company:** Company shall procure and maintain during the term of this Agreement, at Company's sole expense, the following insurance:
- i. **Worker's Compensation and Employer's Liability Insurance** covering obligations imposed by federal and state statutes with jurisdiction over Company's employees.
 - ii. **Property Insurance** covering Company's equipment and other personal property now or hereafter located on Customer's Facility against "All Risk" of Loss within an amount at least equal to replacement value. "All Risk" shall mean at a minimum coverage for Special Causes of Loss perils.
 - iii. **Commercial General Liability Insurance** providing coverage for Company's operations:
Each Occurrence, General Aggregate, Products-Completed Operations Aggregate, Personal Injury, Automobile Liability.
 - iv. **Umbrella Liability Insurance** providing excess coverage over the underlying Commercial General Liability, Automobile Liability and Employers Liability policies.
 - v. **Employee Theft Coverage** for the acts of Company's employees.

Upon Customer's request, Company shall furnish Customer with a Certificate of Insurance evidencing the coverage above.

5. Indemnification:

- A. **Indemnification of the Customer by the Company:** Company agrees to indemnify, hold harmless and defend Customer, its officers, employees, and directors from and against any and all liability for loss, damage or expense for which Customer may be held liable by reason of injury (including death) to any person or damage to any property

which are proximately caused by Company's negligent or intentional acts or omissions in the Services provided, except to the extent due to any act or omission of Customer or any of its employees, subcontractors or agents. In addition, the Company's indemnification for any and all claims here under this Agreement shall be expressly limited to the extent of insurance coverage that is paid to the Company for such claims, if any, under the Company's insurance policies required under this Agreement.

B. **Notification Right to Defend:** A party incurring any claim or loss for which indemnification may be provided pursuant to this section 5 shall promptly notify the other party in writing. The recipient of such notice may, at its own cost and expense, thereupon assume the defense of any third party claim using counsel reasonably satisfactory to the notifying party.

C. **Limitation of Liability/Damages:** Notwithstanding anything to the contrary contained in this Agreement, in no event shall either party be liable to the other for any of the following: (i) indirect damages, punitive damages, incidental damages, or consequential damages including without limitation lost profits, opportunity, use, or savings, or injury to business goodwill or reputation; or (ii) damages for any other claim or liability arising out of or relating to the Services or this Agreement in an aggregate amount which exceeds the amount actually paid by Customer for the Services under this Agreement during the six month period immediately preceding the event giving rise to such claim or liability. Under no circumstances shall the Company be liable for special, indirect, consequential, punitive, expectancy, lost profit or goodwill damages, or for damages caused by the unsatisfactory performance of Company's Staff that does not result in a finally adjudicated claim of damages against the Customer brought by a third party.

D. **Affordable Care Act Compliance:** Customer acknowledges, represents and warrants that Customer is aware of and understands the Patient Protection and Affordable Care Act ("PPACA") enacted in March, 2010 and becoming fully effective March of 2014, that Customer is complying with all laws, rules and regulations under the PPACA. Customer hereby assumes the entire responsibility and liability for any-and-all damages or claims of any nature whatsoever related to its noncompliance or participation in the PPACA. Customer further agrees to indemnify, defend, protect and save harmless Company and its subsidiaries, affiliates, officers, directors, shareholders, partners, successors and assigns, from and against any and all liability, claims, loss, damage and expense, including attorney fees and disbursements, arising from or related to any violation or alleged violation of the PPACA.

E. **Complete Agreement:** The parties agree that this section 5 sets forth their complete agreement with respect to any possible indemnification claim and waive their right to assert any common-law indemnification or contribution claim against the other.

6. Miscellaneous Provisions:

- A. **Severability:** If any provision of this Agreement is held invalid for any reason, the other provisions of this Agreement will remain in effect, insofar as consistent with law.
- B. **Amendments; Waivers:** This Agreement may be amended as agreed between the parties. No amendment, modification, or waiver of any provision of this Agreement shall be binding unless in writing and signed by the party against whom the operation of such amendment, modification, or waiver is sought to be enforced. No delay in the exercise of any right shall be deemed a waiver thereof, nor shall the waiver of a right or remedy in a particular instance constitute a waiver of such right or remedy generally.
- C. **Independent Contractor:** The parties agree that in all aspects their relationship will be that of an independent contractor, and that neither party will act or represent that it is acting as an agent or incur any obligation on the part of the other party.
- D. **Non-Discrimination:** Company agrees that it is an equal opportunity employer and it shall not discriminate against any of its employees or applicants for employment on the basis of race, color, creed, sex, national origin, age or any other protected factor.

- E. Interpretation and Applicable Law: This Agreement has been negotiated at arm's length between the parties hereto, both of which are sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require ambiguities in this Agreement to be interpreted against the party that drafted it are not applicable and are hereby waived. This Agreement shall be subject to, and enforceable under, the laws of the State in which the Customer's property is located, and any dispute arising out of this Agreement shall be submitted to a court of competent jurisdiction in the State. Company and Customer agree that each party is responsible for any attorney's fees or costs associated with any dispute arising out of this Agreement.
- F. "Piggyback" Provision: Pursuant to applicable state law institutes of higher education (colleges, universities, community colleges, technical colleges and trade schools) as well as K-12 school districts may negotiate pricing, terms and conditions directly with Company for equipment-goods and services being provided to Customer under the terms of the Agreement. Each piggyback institution shall issue its own purchasing documents for purchasing equipment-goods/services provided under this Agreement. Customer shall bear no responsibility or liability for any agreements between Company and the other institutions who desire to exercise this option.
- G. Binding: This Agreement shall inure to and bind all parties, their successors, assigns, agents or representatives.
- H. Signature in Counterparts or Facsimile: This Agreement may be signed in counterparts, each of which shall be deemed to be a fully-executed original. An original signature transmitted by facsimile shall be deemed to be original for purposes of this Agreement.
- I. Non-solicitation of Certain Company and Customer Employees: Company and Customer agree that at no time during the term of this Agreement, and for a period of one (1) year immediately following the termination or expiration of this Agreement, will either in any way directly or indirectly, for themselves or on behalf of, or in conjunction with any other person, firm, partnership, corporation or association, approach, solicit, hire, employ or take away any of the other's management personnel, or otherwise interfere with the contractual relationship or employment of the other's management personnel. For purposes of this Section, "management personnel" shall include any and all position titles of Customer, and the following position titles of Company: Site Manager, Assistant Site Manager, Administrative Assistant, Area Manager, Regional Manager, Regional Vice President and Sales Director.
- J. Force Majeure: Neither party shall be liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, explosion, water, act of God or unavoidable accident, civil disorder or disturbance, strikes, vandalism, war, riot, sabotage, weather or energy related closings, governmental rules or regulations, or like causes beyond the reasonable control and without the fault or negligence of such party, or for real or personal property destroyed or damaged due to such causes.
- K. Survival: The indemnification provision and each representation, covenant and warranty of the parties shall survive the termination or expiration of this Agreement for a period of one year.
- L. Titles and Captions: All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not deemed a part of the context hereof.
- M. Language Construction: The language of this Agreement shall be construed in accordance with its fair meaning and not for or against any party. The parties acknowledge that each party and its counsel have reviewed and had the opportunity to participate in the drafting of this Agreement and, accordingly, that the rule of construction that would resolve ambiguities in favor of non-drafting parties shall not apply to the interpretation of this Agreement.
- N. Payment of Fees: In the event of a dispute arising under this Agreement finally resolved through litigation or alternate dispute resolution, the prevailing party shall be entitled to recover reasonable

attorneys' fees and costs.

- O. Entire Agreement: This Agreement contains the entire agreement between the parties. All prior negotiations between the parties are merged in this Agreement, and there are no understandings or agreements other than those incorporated or referred to herein. This Agreement may not be modified except by an instrument in writing signed by both parties. This Agreement may not be assigned by either party without the written consent of the other party. Consent to an assignment to a wholly owned subsidiary or affiliate of the assignor shall not be unreasonably withheld.
- P. Notices: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by courier, registered or certified mail, return receipt requested, properly addressed and postage prepaid, or by overnight mail by a reputable carrier, and addressed as follows:

TO Company:	HES Facilities, LLC. 9202 S Northshore Dr Ste 202 Knoxville, TN 37922
TO Customer:	Asheboro City Schools 112 South Park Street Asheboro City, NC 27203

or at any other address as may be given by either party to the other by notice in writing pursuant to the provisions of this Section.

The parties to this Agreement have executed this Agreement as of the day and year first written above.

HES Facilities, LLC.

Customer

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

ESS Southeast, LLC
SUBSTITUTE STAFF PLACEMENT AGREEMENT

This is an Agreement, entered into as of June 29, 2021, by and between **ESS Southeast, LLC** (the “Company”) located at 800 North Kings Highway, Suite 405, Cherry Hill, New Jersey 08034 and the **Asheboro City Schools** located at 1126 South Park Street Asheboro, NC 27203 (hereinafter referred to as “LEA” for Local Education Agency).

Background

The Company is in the business of providing substitute teachers for LEAs, as well as other related staffing services. The LEA desires to engage the services of the Company on the terms and conditions set forth in this Agreement.

NOW THEREFORE, intending to be legally bound and acknowledging the receipt of adequate consideration, the parties hereby agree as follows:

1. Provision of Substitute Staff. The Company shall be the exclusive provider of substitute teachers and other staff listed in Exhibit “A” (**hereinafter “Substitute Staff”**) to fill positions at the request of the LEA on an as-needed basis, using such request mechanism(s), policies and procedures as may be established by the Company from time to time. The Company makes no guarantee that it will be able to fill all requests made by the LEA.

1.1 The LEA agrees that the Company shall be the exclusive contract provider of Substitute Staff to the LEA. All or any placement of Substitute Staff shall be made pursuant to this Agreement and the processes and procedures established by the Company, be paid by the Company, and be invoiced back to the LEA by Company.

1.2 The LEA will provide a list of staff who the LEA has employed prior to the Agreement and whom the LEA desires to remain in the pool of Substitute Staff assigned by the Company to the LEA. The LEA shall provide a written list of such personnel and may update said list, by written addition or deletion of all changes, as appropriate. If the LEA was serviced by another vendor prior to this Agreement, the LEA will also make a good faith effort to produce a list of staff who provided services through this vendor. Subject to the interview, training, background checks and certification requirements included elsewhere in the Agreement, and normal employee responsibilities attendant to employment, the Company will accept such persons for assignment to the LEA. However, as part of the transition process, the LEA certifies that the aforementioned former Substitute Staff of the LEA meet the state requirements to serve as Substitute Staff (ex. Criminal history, TB Test) for the first 90 days after Company begins services, unless Company is otherwise notified by LEA. The LEA acknowledges that the Substitute Staff will be ineligible to accept substitute assignments after said 90 day period if they are determined to be non-compliant with the laws governing educational employees in the State, which shall be Company’s responsibility to determine pursuant to the terms of the Agreement. LEA further agrees to forward to Company any report of criminal activity regarding these Substitute Staff from local, state or federal law enforcement or other governmental authorities.

2. Treatment of Substitute Staff as Employees of the Company All Substitute Staff provided by the Company will be treated by the LEA as employees of the Company, and not as employees of the LEA, for all purposes, including but not limited to Federal and State income tax purposes. Without limiting the preceding sentence:

2.1 The Company shall maintain all necessary personnel and payroll records for the Substitute Staff;

2.2 The LEA shall not be responsible for the payment of the wages and fringe benefits (if any) of the Substitute Staff; the Company shall withhold applicable taxes from the wages of the Substitute Staff, and shall be responsible for any payroll tax liabilities of an “employer” with respect to the Substitute Staff;

2.3 The Company shall provide applicable workers’ compensation insurance coverage for the Substitute Staff in such amounts as may be required by law; and

2.4 Substitute Staff shall not be eligible for tenure with the LEA or be entitled to participate in any of the LEA’s employee benefit plans, including pension, 403(b), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay and other similar plans, programs and agreements, whether or not reduced to writing.

2.5. In order to provide certain Substitute Staff who are obtaining the required initial or renewal State certifications, depending upon state requirements, the LEA recognizes that it may be required to execute certificate/permit/license applications and other related documents, such as a criminal history request as a representative of or on behalf of the Company. If necessary, the LEA designates the Company as its designee to submit a Substitute Staff’s credentials to the county or state department of education office to obtain the Substitute Staff certifications. The LEA recognizes that it may be required to execute certain documents to allow the Company to perform its function as its designee. In such instances, the LEA is not responsible for any of the obligations of the Company as the employer included in this Paragraph 2.

3. The Company’s Obligations

3.1 The Company will act in good faith to provide Substitute Staff who, if needed or applicable, (a) hold a current license and certification for the positions requested by the LEA, (b) have had a completed criminal history and child abuse background check as required by law and/or the applicable Department of Education, (c) have appropriate health screenings, inoculations and tuberculosis testing as required by the state and (d) who shall render services in accordance with applicable laws and procedures of the state and this Agreement.

3.2 In selecting Substitute Staff, the Company shall apply such screening and evaluation criteria as it may determine in its sole discretion and as may be required by the applicable law of the jurisdiction in which the services of Substitute Staff will be performed. The Company will conduct any additional screening that may be mutually agreed by the Company

and the LEA, with an appropriate increase in the Company's fees, to be agreed to in advance, in writing, by the LEA.

3.3 The Company seeks to provide Substitute Staff that are trained for the requested positions. The Company will provide Substitute Staff training as required by the State, including as applicable, classroom management, general rules and procedures applicable to the position, and other pertinent matters prior to any assignment of said Substitute Staff. For existing LEA staff, the Company shall provide training as requested by the LEA for a fee equal to the Company's actual cost.

3.4 The Company expects that the Substitute Staff assigned to the LEA will perform their services satisfactorily. If the LEA notifies the Company via the company electronic portal that a Substitute Staff has not performed satisfactorily within the reasonable discretion of the LEA, along with the clear reasons therefor, the Company will honor the LEA's request not to assign specific Substitute Staff. This section will in no way affect the right of Company, in its sole discretion as employer, to hire, assign, reassign, discipline and/or terminate its own employees. The LEA understands that declining the services of a specific Substitute Staff may result in the Company's inability to secure an acceptable alternate if timely notice of the request is not provided.

4. The LEA's Obligations. In connection with Substitute Staff provided by the Company pursuant to this Agreement, the LEA shall:

4.1 Provide information to the Substitute Staff as needed to allow the Substitute Staff to fully understand the duties and responsibilities of the placement and promptly report to Company any suspicious, unusual, inappropriate behavior or unsatisfactory performance;

4.2 Provide a safe and suitable workplace that complies with all applicable governmental safety and health standards, statutes, and regulations;

4.3 Provide Substitute Staff with (i) adequate information, training, and safety equipment with respect to hazardous substances and any inherent dangers of the workplace (including known violent students, as allowed by applicable law), (ii) emergency procedures, and (iii) school rules and protocols, policies and procedures regarding student disciplinary actions, and confidentiality of student records. Further, the LEA will provide all Substitute Staff with any training appropriate to the needs, duties, responsibilities or knowledge unique to the LEA or otherwise different than would generally be appropriate in other LEAs.

4.4 Not assign Substitute Staff to assignments which (i) have sole custody of a single student for an extended period without LEA oversight, (ii) have sole responsibility for more than one classroom of students at a time, (iii) administer or maintain custody of any student medications, (iv) have custody of cash, negotiable valuables, merchandise, credit cards, check writing materials, keys or similar property, except for student lunch money that may be collected in the normal course of business, (v) use any vehicle on behalf of the LEA; (vi) work more than eight (8) hours in a day or more than forty (40) hour per week without notice to Company;

4.5 Assign Substitute Staff only to tasks for which they have been requested, unless written consent has been given by the Company. Heavy labor, lifting, or physical activity is prohibited unless required and accepted in the job description.

4.6 Not assign Substitute Staff to travel or perform duties off the normal school premises of the LEA except for class trips which are supervised by an LEA teacher;

4.7 If Substitute Staff is assigned duties in connection with the LEA's computer systems, maintain appropriate password security and backup copies of all data;

4.8 Maintain appropriate written internal control policies and procedures to ensure the confidentiality of all student records and appropriately limit the access of Substitute Staff to such records;

4.9 Not promise any Substitute Staff an increased rate of compensation;

4.10 Comply with any reasonable restrictions imposed by the Company on the responsibilities to be assigned to any Substitute Staff;

4.11 Approve and sign paper or electronic forms supplied by the Company documenting the amount of time worked by Substitute Staff or, if representatives of the LEA are not available to approve and sign such forms, authorize such forms to be executed by representatives of the Company on behalf of the LEA;

4.12 Be responsible for keeping the Company promptly informed by email (if available) of all Substitute Staff on-site changes and any changes in the LEA or building supervisory contact information;

4.13 Comply with all Company policies and procedures to accurately invoice the LEA, process the daily record keeping and other tasks necessary for the Company to administer and track Substitute Staff, including but not limited to, sign in and out procedures and related records;

4.14 The LEA shall be solely responsible to control staff absences and any budgetary impact resulting therefrom;

4.15 LEA represents that its actions under this Agreement do not violate its obligations under any agreement that LEA has with any labor union;

4.16 LEA shall cooperate with Company with respect to Company's recruiting efforts and activities, including but not limited to, (i) promptly sharing applications for LEA positions with Company; (ii) adding a link on the front page and employment page of the LEA's website to Company's website, and (iii) reasonably assisting Company with advertising positions on LEA social media accounts;

4.17 If allowable by state procurement law, other LEAs may utilize this Agreement

if mutually agreeable to Company.

4.18 LEA shall cooperate and coordinate with Company with respect to Company's development and installation of Company's information technology (IT) systems for the LEA. The LEA understands that failure to cooperate in this regard may lead to a delay in services.

4.19 In the event of a complaint concerning Substitute Staff, LEA shall provide Company with a written incident report. Company and LEA agree to cooperate, exchange information, and reasonably permit each other's involvement in any investigatory activities or proceedings to the extent allowable by law.

5. Indemnification and Limitations of Liability.

5.1 **Indemnification of the LEA by the Company.** The Company shall indemnify and hold the LEA's Board, and its agents, employees and Board members harmless from and against all claims or losses incurred, including reasonable attorney's fees, that are proximately caused by the acts or omissions of the Company, Substitute Staff, or other employees or authorized agents of the Company, or by the Company's breach of this Agreement, except that such indemnification shall not apply to any claims or losses for which the Company is entitled to indemnification by the LEA. In addition, the Company's indemnification for any and all claims here under this Agreement shall be expressly limited to the extent of insurance coverage that is paid to the Company for such claims, if any, under the Company's insurance policies required under this Agreement.

5.2 **Indemnification of the Company by the LEA.** The parties acknowledge that the LEA, as a governmental entity, has sovereign immunity and nothing in the paragraph shall be construed as a waiver of its sovereign immunity. The LEA shall indemnify and hold the Company harmless from and against all claims or losses incurred by the Company, including reasonable attorney's fees, (i) that are proximately caused by the acts or omissions of the LEA or its employees or authorized agents, or by the LEA's breach of this Agreement; or (ii) arise from any injury to Substitute Staff or other persons on the premises of the LEA or while performing services on behalf of the LEA and not caused by the acts or omissions of the Company, Substitute Staff, or other employees or authorized agents of the Company.

5.3 **Notification; Right to Defend.** A party incurring any claim or loss for which indemnification may be provided pursuant to this section 5 shall promptly notify the other party in writing. The recipient of such notice may, at its own cost and expense, thereupon assume the defense of any third party claim using counsel reasonably satisfactory to the notifying party.

5.4 **Limitation of Damages.** Under no circumstances shall the Company be liable for special, indirect, consequential, punitive, expectancy, lost profit or goodwill damages, or for damages caused by the unsatisfactory performance of Substitute Staff that does not result in a finally adjudicated claim of damages against the LEA brought by a third party.

5.5 **Complete Agreement.** The parties agree that this section 5 sets forth their

complete agreement with respect to any possible indemnification claim, and waive their right to assert any common-law indemnification or contribution claim against the other.

6. Fees and Payment.

6.1. **The Company's Pricing Plan**, attached hereto as Exhibit A and made a part of this Agreement, is accepted by the LEA. The Company shall submit to the LEA a standard weekly invoice showing in reasonable detail the services provided. For hourly positions, LEA shall pay for all time actually worked by Substitute Staff, not scheduled time.

6.2 Advance Payment. [Intentionally Omitted]

6.3 **Changes to Pricing Plan.** In the event that the LEA requests to increase the established pay rate for Substitute Staff from that specifically listed on Exhibit A, or if the LEA requests to establish a new Substitute Staff classification or new pay rate to be paid to some or all of the Substitute Staff not identified on Exhibit A (e.g., for improved recruitment, retention or for other reasons), the billing rate to the LEA shall be determined by using the markup used on Exhibit A. The LEA shall provide the Company fourteen (14) days prior written notice of its request to change an existing pay rate or establish a new Substitute Staff classification and pay rate.

The Company may change the Pricing Plan contained on Exhibit A in the event that government (local, state or federal) mandated labor costs, including but not limited to, employee healthcare or family leave benefits, minimum wage, payroll taxes, or workers compensation rates, which are required by law, regulation or mandate are enacted, implemented, become effective or are increased after the date of this Agreement. The Pricing Plan shall be adjusted as of the effective date of the law, regulation or mandate to reflect the actual cost increase to the Company reasonably calculated on a direct or pro rata basis. For multi-year Agreements or whenever this Agreement is extended, the Pricing Plan will be modified to reflect a cost of living adjustment equal to the lesser of 3% or the applicable consumer price index rate for the LEA for the twelve months preceding the most recent quarterly rate (with district approval).

6.4 **Affordable Care Act.** The Patient Protection and Affordable Care Act ("ACA") became effective January 1, 2014. The ACA has a look back period that determines Substitute Staff eligibility for healthcare insurance coverage that shall begin on the beginning of this Agreement.

The Company normally hires Substitute Staff as part time employees who will work on average less than 30 hours per week such that they are not eligible for healthcare benefits under the ACA. However, should the LEA in its discretion employ Substitute Staff to work directly for LEA in addition to the hours worked for Company (example: after school program director or coach), and the combined work hours of the Substitute Staff cause the Substitute Staff to be deemed eligible to receive healthcare benefits under the ACA, the LEA agrees to reimburse the Company's cost of providing the minimum plan healthcare insurance coverage under the ACA.

6.5 Use or Employment of Substitute Staff by the LEA Directly. Company maintains the right to manage the schedule of its employees. Accordingly, if the LEA engages the services of any Substitute Staff other than through the Company on a per-diem, hourly or other basis, whether for services covered in this Agreement or otherwise, the LEA shall promptly notify the Company in writing and provide all information as the Company may reasonably request. Furthermore, if LEA hires Substitute Staff for services which are provided by Company in accordance with this Agreement, for the lesser of the period for which such Company employee is engaged or the term of this Agreement, the LEA shall calculate and pay to the Company any amounts due by using the daily or hourly markup used on Exhibit A. Failure of the LEA to promptly notify the Company that it has employed Substitute Staff may result in the Company continuing to pay wages to the Substitute Staff for assignments which are not worked. In such event, the LEA shall be liable to Company for all costs, including wages paid to the Substitute Staff, lost markup, and reasonable collection costs.

If LEA hires Substitute Staff as a full-time employee of the LEA during the term of this Agreement, LEA shall pay to Company the sum of \$2,500.00. This payment is to reimburse Company for recruitment expenses and lost revenue. This fee shall not be due if the Substitute Staff was a “district original”, i.e. previously working for the LEA at the start of this Agreement, or if the Substitute Staff has worked Sixty (60) or more days of assignments as Substitute Staff for the LEA.

6.6 Non-Solicitation of Company Corporate Staff. LEA agrees that during the term of this Agreement and for a period of 12 months after the termination of the Agreement, without obtaining the prior written consent of the Company, neither the LEA nor any of its affiliates shall directly or indirectly, for itself or on behalf of another person or entity solicit for employment or otherwise induce, influence or encourage to terminate employment with the Company or employ or engage as an independent contractor any corporate employee of the Company (i.e. employee working for Company in a role other than as “Substitute Staff”) with whom the LEA had contact or who became known to the LEA in connection with this Agreement. For the purposes of this section, “Company” also includes Source 4 Solutions LLC.

6.7 Payment. The LEA shall pay the Company (ESS) upon receipt of invoice via an ACH Debit initiated by Company. If the LEA is unable to provide an ACH initiated by Company, the LEA can elect to provide an ACH, wire transfer, or check. Payment not received within thirty (30) business days after receipt of invoice will be subject to a \$25.00 late fee and 1% per month service charge. Any dispute of billing must be communicated to Company within 10 days of receipt of invoice. Any adjustments less than 10% of the invoice will not delay payment and will be applied to the following invoice. LEA shall be liable for all of the Company’s reasonable costs of collection, including reasonable attorneys’ fees, both (i) and (ii) to apply without any prior notice requirement.

6.8 Sales and Use Tax. The services to be provided for this contract are currently exempt from any sales and use taxes or similar governmental charges or value added tax imposed with respect to the services provided by the Company. If any such taxes or charges are otherwise due or are imposed or become due, they will be the responsibility of the LEA.

7. Term. The term of this Agreement shall begin on July 1, 2021 and shall remain in effect through June 30, 2022. Thereafter, the Agreement shall automatically renew on a yearly basis after the term for up to four additional years unless either party provides written notice of termination at least thirty (30) days prior to the end of the fiscal school year. Notwithstanding the preceding sentence, either party may terminate this Agreement if (i) the other party breaches a material provision of this Agreement and such breach is not cured within 30 days following written notice or (ii) in the case of a breach that by the terms of the breach cannot be cured within 30 days, the breaching party has not instituted measures to cure such breach within 10 days and fully cured such breach within 90 days. Further, the Company has the right to terminate this Agreement should any student or LEA employee physically or verbally assault or injure a Company's employee, and the LEA does not respond to the incident to the Company's satisfaction. In the event either party terminates this Agreement, the LEA shall pay all amounts due under the terms of this Agreement to the Company for services provided through the date of termination.

8. Insurance Coverage. Each party shall, at its own cost and expense, maintain insurance coverage reasonably appropriate for the activities it conducts and the risks it assumes. The insurance coverage maintained by the Company shall include:

8.1 Workers' compensation coverage of such types and in such amounts as may be required by the laws of the jurisdiction in which the services of Substitute Staff are performed;

8.2 Commercial general liability coverage, including personal injury, blanket contractual liability, and broad form property damage, with a \$2,000,000 combined single limit per occurrence;

8.3 Umbrella coverage with a \$1,000,000 combined single limit per occurrence.

9. Confidentiality & Non-Disparagement. During the course of the business relationship, each party may be given access to proprietary or confidential information of the other, including, but not limited to, pricing policies, the identity and social security numbers of employees, and business policies and systems ("Confidential Information"). Each party shall hold Confidential Information of the other party in confidence, treating such Confidential Information with no less care than it treats its own, and shall not disclose such Confidential Information to any third party or use such Confidential Information for any purpose other than as contemplated by this Agreement. Upon termination of this Agreement, or sooner if requested by either party, each party shall return all Confidential Information of the other party in its possession, without retaining copies of such Confidential Information. This section shall not apply to information (i) that is in the public domain, or (ii) required to be disclosed by law or legal process.

At no time during or after the term of this Agreement and for a period of two (2) years thereafter shall either party directly or indirectly disparage the commercial business, professional or financial, as the case may be, reputation of the other party or any of their employees, management, owners or officers.

10. Absentee Management System; Data and Intellectual Property. To provide Substitute Staff, Company may utilize its own or the LEA's absentee management system (hereinafter "System") as it is agreed between the parties. Under either method, the Company owns all employee and absence management information data related to Substitute Staff. If the Company utilizes the LEA's System, the LEA shall allow and authorize the Company full access to the System (sometimes referred to as "Super User" status) throughout the term of the Agreement and for thirty days after termination. In the event this Agreement is terminated, Company shall have thirty (30) days to remove Company data from the System. All Company data, intellectual property, including processes, procedures and knowhow, trademarks and copyrights, are and shall remain the sole property of the Company.

11. Miscellaneous

11.1 Amendments; Waivers. This Agreement may be amended as agreed between the parties. No amendment, modification, or waiver of any provision of this Agreement shall be binding unless in writing and signed by the party against whom the operation of such amendment, modification, or waiver is sought to be enforced. No delay in the exercise of any right shall be deemed a waiver thereof, nor shall the waiver of a right or remedy in a particular instance constitute a waiver of such right or remedy generally.

11.2 Notices. Any notice or document required or permitted to be given under this Agreement shall be deemed to be given on the date such notice is (i) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (ii) deposited with a commercial overnight delivery service with delivery fees paid, or (iii) transmitted by facsimile or electronic mail with transmission acknowledgment, to the principal business address of the recipient or such other address or addresses as the parties may designate from time to time by notice satisfactory under this section. A copy of any notice to the Company shall be sent to the attention of the Company's president at the regular business address of the Company.

11.3 Governing Law. This Agreement shall be governed by the internal laws of the LEA's state without giving effect to the principles of conflicts of laws. Each party hereby consents to the personal jurisdiction of the federal or state courts located in LEA's County, and agrees that all disputes arising from this Agreement shall be prosecuted in such courts. Each party hereby agrees that any such court shall have in personam jurisdiction over such party and consents to service of process by notice sent by regular mail to the address set forth above and/or by any means authorized by the law of the LEA's state.

11.4 Language Construction. The language of this Agreement shall be construed in accordance with its fair meaning and not for or against any party. The parties acknowledge that each party and its counsel have reviewed and had the opportunity to participate in the drafting of this Agreement and, accordingly, that the rule of construction that would resolve ambiguities in favor of non-drafting parties shall not apply to the interpretation of this Agreement.

11.5 Payment of Fees. In the event of a dispute arising under this Agreement finally resolved through litigation or alternate dispute resolution, the prevailing party shall be entitled to

recover reasonable attorneys' fees and costs.

11.6 Force Majeure. Neither party shall be responsible for delays or failure to perform caused by acts of God (including fire, flood, storm, or other natural disturbances), war, civil war, riot, epidemic, acts of foreign enemies, terrorist activities, government sanction, strikes or other labor disputes (it being specifically understood that the existence of any picket line by a collective bargaining unit shall be considered as within this definition of force majeure), interruption or failure of electric, telephone or similar service or other causes beyond such party's control.

11.7 Signature in Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed to be a fully-executed original.

11.8 Signature by Facsimile. An original signature transmitted by facsimile shall be deemed to be original for purposes of this Agreement.

11.9 Assignment. No party to this Agreement shall assign its rights or duties hereunder, without the prior written consent of the other parties, except that the Company may assign its rights and duties in connection with a sale or other disposition of all or substantially all of its business and may assign e-learning solutions for distance instruction to Proximity Learning, Inc., an ESS company.

11.10 No Third Party Beneficiaries. Except as otherwise specifically provided in this Agreement, this Agreement is made for the sole benefit of the parties. No other persons shall have any rights or remedies by reason of this Agreement against any of the parties or shall be considered to be third party beneficiaries of this Agreement in any way.

11.11 Binding Effect. This Agreement shall inure to the benefit of the respective heirs, legal representatives and permitted assigns of each party, and shall be binding upon the heirs, legal representatives, successors and assigns of each party.

11.12 Titles and Captions. All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not deemed a part of the context hereof.

11.13 Pronouns and Plurals. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

11.14 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior discussions, agreements, understandings and negotiations. The LEA and Company agree that in the event that any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid any other provision of this Agreement.

[INTENTIONALLY LEFT BLANK; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

ESS Southeast, LLC

By _____
Steve Gritzuk, Chief Operating Officer

Date _____

Asheboro City Schools

By _____
Signature

Name and Title

Date _____

EXHIBIT A

PRICING PAID BY THE LOCAL EDUCATION AGENCY TO COMPANY

Position	Pay Rate	Bill Rate	Rule
Licensed Substitute Teacher	\$103.00	\$138.02	Dail
Non-Licensed Substitute Teacher	\$85.00	\$113.90	Daily
Permanent Instructional Assistant	\$100.56	\$134.75	Daily
After School Assistant	9.35/hr	\$12.53	Hourly
After School Lead Program Assistant	12.25/hr	\$16.42	Hourly