

## **INDEPENDENT CONTRACTOR AGREEMENT**

This Agreement is made and entered into by and between Arlington Community Schools (“ACS”); Germantown Municipal School District (“GMSD”); Lakeland School System (“LSS”); Millington Municipal Schools (“MMS”); each individually a “District” and collectively, the “Districts”; and Don McKee (“Contractor”). Districts and Contractor are each individually a “Party” and collectively, the “Parties”.

**WHEREAS**, the Districts are entities authorized pursuant to the laws of the State of Tennessee to operate public school districts within Shelby County, Tennessee; and

**WHEREAS**, pursuant to Tennessee Code Annotated §7-51-908, the Districts are authorized to contract among themselves for matters concerning education; and

**WHEREAS**, the each District desires to implement a Public Sector Occupational Safety and Health Program Plan (“Plan”);

**WHEREAS**, the Districts desire to appoint Contractor as its Safety Director of Occupational Safety and Health; and

**WHEREAS**, the Contractor has knowledge, skills and training to provide professional services to Districts under the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

### **I. APPOINTMENT**

A. The Districts appoint the Contractor as an independent contractor to serve as the Safety Director of Occupational Safety and Health for each District under the terms and conditions set forth in this Agreement.

B. The terms of this Agreement shall begin on the Effective Date.

C. Districts and Contractor intend to create the relationship of purchaser of independent contractor services (Districts) and independent contractor (Contractor). Districts and Contractor shall not be construed as joint venturers, employer-employee, partners or agents of each other, and no Party shall have the power to bind or obligate the other except to the extent set forth in this Agreement.

Since Contractor understands that for all purposes under this Agreement he will operate as a Contractor, Contractor retains full independence in exercising judgment as to the time, place and manner in performing the services needed by Districts. Both the Districts and the Contractor acknowledge and agree that they shall file all tax returns and be responsible for all tax liabilities in a manner which is consistent with the relationship of purchaser of independent contractor services and independent contractor.

## **II. OBLIGATION. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

### **A. Contractor will for each District:**

1. Devote sufficient time and attention to fulfill the duties and provide the services as required herein;
2. Comply with all applicable federal, state and local laws, ordinances, rules, regulations and policies;
3. Complete the Public Sector Resolution and, after execution by the appropriate individuals for a District, submit that to the State of Tennessee.
4. Prepare and submit all required reports to the Tennessee Commissioner of Labor and Workforce Development, the Bureau of Labor Statistics and other enforcement entities;
5. Make periodic and follow-up inspections of all facilities an worksite where District employees are employed;
6. Assist in scheduling and monitoring inspections by Tennessee State officials;
7. Assist in the abatement of imminent dangers;
8. Make recommendations to correct hazards or exposures observed or otherwise discovered by Contractor;
9. Resolve complaints submitted by employees;
10. Make any inspections required by complaints submitted by employees or inspections requested by employees;
11. Maintain all records required by each District's Plan;
12. Advise District personnel who are responsible for safety surveys, accident reports or other obligations under the District's Plan.

13. Assist in the development and implementation of employee education and training regarding safety and health;

B. Contractor represents and warrants to Districts that:

1. Contractor is solely responsible for the payment of all taxes, expenses, (or contributions of any kind) in conducting his services.

2. Contractor has sufficient automobile liability insurance with an insurance company licensed in the State of Tennessee. Contractor shall provide any District, upon request, with evidence of compliance with this provision;

3. Contractor acknowledges that he may have direct contact with school children or who will come on or about school property when children are present and therefore he will submit to a criminal history records check conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation in compliance with Tennessee Code Annotated § 49-5-413(d).

4. Contractor has the right to enter into and perform this Agreement and indemnifies the Districts against any damages, expenses or claims, including attorney's fees, by reason of any breach of this warranty or on account of any and all liability arising out of any act of omission on the part of Contractor.

### **III. CONFIDENTIAL INFORMATION**

A. Contractor recognizes and acknowledges that by virtue of entering into this Agreement, that the Contractor will have access to information of the Districts that is deemed confidential. Thus, Contractor agrees not to disclose or communicate (directly or indirectly) to others at any time (during or after the termination of this Agreement) confidential or proprietary information of any District.

B. Upon the termination of this Agreement by any District, Contractor agrees to return all documents, materials (and copies, of any kind, of any such materials) or other property of the District to the District's business office and to certify to the District that all such items and copies have been returned.

### **IV. COMPENSATION**

A. Contractor shall be paid by each District an annual fee of \$1,000.00 per District facility covered by the District's Plan.

B. Each District shall pay to Contractor percent (40%) of the fiscal year annual fee on or before July 20; thirty percent (30%) of the annual fee on or before January 20; and thirty percent (30%) of the annual fee on or before June 20; provided, however, that for the 2015-2016 fiscal year, the forty percent (40%) payment shall be paid by each District within twenty calendar days of the effective date of this Agreement.

## **VII. TERM AND TERMINATION**

A. The term of this Agreement shall begin September \_\_, 2015 (“Effective Date”), and shall be binding and continue in effect until terminated as provided by this Agreement.

B. This Agreement may be terminated by written notice to Contractor by any individual District, in its discretion, if the Contractor fails or refuses to faithfully or diligently perform his obligations as set forth in this Agreement or any breach of this Agreement by the Contractor, provided however the Contractor shall receive written notice and a period of thirty (30) days in which to cure the performance issue(s) or breach. If cured, the notice of termination will be considered withdrawn.

C. Contractor may terminate this Agreement with respect to any District upon breach of this Agreement by the District, provided however the District shall receive written notice and a period of thirty (30) days in which to cure the breach. If cured, the notice of termination will be considered withdrawn.

D. Any Party may terminate this Agreement with or without cause upon at least ninety (90) days advance written notice, in which case termination shall become effective on June 30 immediately following such notice.

## **VIII. DISPUTE RESOLUTION**

A. Districts and Contractor shall endeavor to resolve claims, disputes and other matters in question between or among them in good faith by first referring the matter to a designated executive of each Party to the dispute. Said executives shall attempt to resolve the matter within ten (10) days after the date of notice of dispute.

B. If such executives cannot resolve the matter, it shall be referred to mediation by a Tennessee Supreme Court Rule 31 mediator selected by agreement between or among the disputants. A request for mediation shall be made in writing, delivered to the other Party or Parties to the dispute. The Parties agree to engage in multi-party mediation if required for the resolution of the dispute.

C. The Parties shall share the mediator's fee and any filing fees equally but otherwise each Party shall be responsible for its own costs. The mediation shall be held in Shelby County,

Tennessee unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

D. Mediation shall be required and shall proceed in advance of litigation. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the Parties agree to submit the matter to mediation as soon as reasonably possible. If the Parties do not resolve a dispute through mediation, any Party may proceed to litigation in a court of competent jurisdiction in Shelby County, Tennessee.

## **IX. APPLICABLE LAW**

This Agreement, its execution, interpretation and performance shall be governed by the laws of the State of Tennessee. Contractor hereby consents to and submits to the jurisdiction of the courts to Shelby County, Tennessee for any action arising under this This Agreement was executed by the Districts in Tennessee and any dispute arising hereunder shall be resolved by the courts within Tennessee.

## **X. ENTIRE AGREEMENT**

This Agreement contains the entire agreement and understanding by and between the Districts and the Contractor with respect to the agreement with Contractor. No representations, promises, agreements, or understandings, written or oral, not contained in this Agreement shall be of any force or effect.

## **XI. AMENDMENTS OR MODIFICATION**

No amendment, change, or modification of this Agreement shall be valid or binding unless it is in writing, signed by both the Districts and the Contractor.

## **XII. WAIVER**

No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the waiver is sought to be enforced. No waiver of any provision of this Agreement at any time shall be deemed or construed as a waiver of any other provision of this Agreement at the same time, or at any previous or subsequent time. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

### **XIII. SEVERABILITY**

The provisions of this Agreement shall be severable and should any provision be determined legally invalid or unenforceable, such part of this Agreement shall be deemed severed and shall not affect the enforceability of the other provisions hereof.

### **XIV. NOTICE**

Any notice required by this Agreement will be valid when mailed to:

- Dr. Don McKee  
1075 Mullins Station Road, Room W297  
Memphis, TN 381345
- Tammy S. Mason  
Arlington Community Schools  
5475 Airline Road  
Arlington, TN 38002
- Dr. Ted Horrell  
Lakeland School System  
10001 Highway 70  
Lakeland, TN 38002
- Jason Manuel  
Germantown Municipal School District  
6685 Poplar Ave., Suite 202  
Germantown, TN 38138
- Dr. David Roper  
Millington Municipal Schools  
5020 Second Avenue  
Millington, TN 38053

### **XV. COUNTERPART SIGNATURES**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized representatives.

**Arlington Community Schools**

**Lakeland School System**

\_\_\_\_\_  
Kay Williams, Board Chair

\_\_\_\_\_  
Kevin Floyd, Board Chair

\_\_\_\_\_  
Tammy Mason, Superintendent

\_\_\_\_\_  
Ted Horrell, Superintendent

**Germantown Municipal School District**

**Millington Municipal Schools**

\_\_\_\_\_  
Lisa Parker, Board Chair

\_\_\_\_\_  
Don Holsinger, Board Chair

\_\_\_\_\_  
Jason Manuel, Superintendent

\_\_\_\_\_  
David Roper, Superintendent

**IN SIGNING BELOW, I AGREE TO THE FOREGOING AGREEMENT AND ACKNOWLEDGE THAT I WILL BE PERFORMING SERVICES AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE.**

\_\_\_\_\_  
Don McKee