

## **Agreement for Educational Management Services**

This Agreement is dated July 30, 2019 (the "**Effective Date**") and is by and between Jayne Ellspermann, LLC (the "Contractor") located at 2403 SE 19<sup>th</sup> Circle, Ocala, Florida 34471 and The School Board of Marion County, Florida, a body corporate existing under the laws of the State of Florida (the "District") located at 512 SE Third Street, Ocala, Florida 34471.

Whereas, pursuant to § 1008.33, Fla. Stats. (2019), and Fla. Admin. Code R. 6A-1.099811, the Florida Department of Education ("FDOE") requires the District to submit a "Turnaround Option Plan" that sets forth a new option for School Year 2019-2020 for the operation of Evergreen Elementary School located at 4000 W. Anthony Road, Ocala, Florida 34475 (the "School");

Whereas, the District has submitted its Turnaround Option Plan to FDOE, attached hereto and incorporated herein by this reference as **Exhibit A**, and approval of the District's Turnaround Option Plan is pending approval by the State Board of Education;

Whereas, the District's Turnaround Option Plan selected the option of entering into a contract with an external operator in order to satisfy the requirements of § 1008.33, Fla. Stats. (2019), and Fla. Admin. Code R. 6A-1.099811;

Whereas, the District requested and reviewed proposals from potential external operators and considered each proposer's demonstrated record of effectiveness to operate a school pursuant to § 1008.33(4)(b)3, Fla. Stats. (2019), and Fla. Admin. Code R. 6A-1.099811(6)(b)4;

Whereas, as a result of the District's review, the Contractor is selected by the District to fulfill the purpose of operating the School, and the Contractor agrees to provide such services to the District as outlined herein; and

The District and Contractor wish to outline in writing the terms and conditions pursuant to which the Contractor will provide such services to the District; and

The District is authorized to enter into this Agreement for professional development and educational services pursuant to School Board Policy 7.70 and Fla. Admin. Code R. 6A-1.012(11)(a)&(b).

In consideration of the promises and the mutual covenants and undertakings, the parties hereto agree as follows:

1. Recitals. The recitals outlined above are true and correct and incorporated herein by this reference.
2. Conditions to this Agreement. It is the intent of the parties that this Agreement satisfy the requirements of FDOE regarding the District's obligation "to enter into a contract with an outside entity [or external operator] that has a demonstrated record of school improvement in turning around schools that are high-poverty and low-performing with students of similar demographics and effectiveness to operate the [School]" pursuant to § 1008.33(4)(b)3, Fla. Stats. (2019), and Fla. Admin Code R. 6A-1.099811(6)(b)4. Notwithstanding anything to the contrary in this Agreement, the parties agree that this

Agreement will automatically terminate, and be of no further force and effect, upon the occurrence of any of the following:

- (a) The School earns a grade of "C" or higher upon the Florida Department of Education release of school grades in the Summer of 2020 (or any subsequent school year if this Agreement is renewed), thereby resulting in the School's exiting the statutory or regulatory requirement that the District enter into a contract with an outside entity that has a demonstrated record of effectiveness to operate the School;
- (b) The requirements of differentiated accountability require termination of this Agreement, or are amended by the Florida Legislature or FDOE thereby resulting in the purpose of this Agreement being terminated (for example, whether the District is no longer required to enter into this Agreement or whether the District is required to select a different option for the School as a result of FDOE/SBE rejection of the proposed plan);
- (c) The Florida statutes or FDOE administrative rules are invalidated by a court of competent jurisdiction, with the resulting outcome being that this Agreement is no longer required of the District;
- (d) Upon release of the current year's school grades should the operator fail to make progress in its current schools; or

In the event that any of the above-conditions occur, then either party may send written notice to the other party to terminate this Agreement pursuant to the terms and provisions outlined above, with such termination to be effective upon receipt of notice of termination. If this Agreement is terminated as provided herein, then the parties will be relieved of all of their respective obligations under this Agreement, and the District will only be required to pay to the Contractor that amount of work under this Agreement actually performed to the date of termination. Access to any and all work papers and data collected will be provided to the District after the termination of this Agreement, and the parties will reasonably cooperate regarding the transition of rights, obligations and duties back to the District to operate the School. In the event this Agreement is terminated pursuant to this section 2(a) – (c), then the parties agree to jointly review the School's performance for the prior school year and negotiate in good faith for educational and professional services as may be needed for the School for the subsequent school year.

3. Turnaround Option Plan. The parties agree that the Turnaround Option Plan outlined in Exhibit A is a draft to be approved by the State Board of Education. If the State Board of Education requires alterations to the Turnaround Option Plan for approval, and such changes are immaterial, then the parties agree that the Turnaround Option Plan approved by the State Board of Education will be substituted and replace the document attached in Exhibit A. If, however, the State Board of Education requires material alterations to the Turnaround Option Plan for approval, then the parties agree to negotiate in good faith such amendments to this Agreement as may be necessary to fully implement this Agreement in compliance with the approved Turnaround Option Plan.

4. Relationship of Parties. Contractor is an independent contractor for all purposes arising under this Agreement. Contractor and its officers, agents, or employees will not, under any circumstances, hold themselves out to anyone as being officers, agents, or

employees of District. No officer, agent, or employee of Contractor, or District will be deemed an officer, agent, or employee of the other Party. Neither Contractor nor District, nor any officer, agent or employee thereof, will be entitled to any benefits to which employees of the other Party are entitled, including, but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave, or other leave benefits. Nothing in this Agreement will permit the District to exercise control or direction over the means or methods by which the Contractor perform the services for which it has been engaged. However, the District and the Contractor will fully comply with all performance standards outlined in this Agreement, all currently approved and generally accepted professional standards governing the particular professional specialty for which the Contractor has been engaged, and all other applicable local, state or federal rules and regulations pertaining to licensure and the provision of professional services. As an independent contractor, the Contractor is responsible for all taxes incident to payments made in connection with this Agreement (including without limitation, all state and federal income taxes payroll and other taxes, and Workers' Compensation).

5. Services. Both parties agree that the scope of the Contractor's responsibility, as outlined in this Agreement, will be performed in accordance with the Turnaround Option Plan and statutory requirements, and will consist of the services set forth in Exhibit B attached hereto and incorporated herein by this reference. If any services, functions, or responsibilities not specifically described in this Agreement are necessary for the proper performance and provision of the services, upon the agreement of the parties, such services, functions, or responsibilities is included within the scope of the services. Subject to the terms and conditions in this Agreement, the Contractor is responsible for providing the supplies, leadership and instructional staff, curriculum and instruction, assessments and progress monitoring, professional development, and any other identified school improvement areas, along with any other resources as necessary to provide the services.

6. Duties of Contractor. Subject to the provisions of section 7(a) below, the Contractor is responsible for the following:

(a) The services provided by the Contractor under this Agreement will be consistent with the available facilities, the Contractor's professional judgment and the standards established in the District's community.

(b) The Contractor will comply with the requirements of providing a free appropriate public education, including but not limited to, compliance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, Sections 1000.05 and 1001.42(4)(l), Fla. Stats. (2019), Fla. Admin. Code R. Chapter 6A-6 Special Program I, and 20 U.S.C. §1221 - the General Education Provisions Act.

(c) The Contractor agrees to comply with all applicable laws, statutes, regulations, rulings, or enactments of any governmental authority, and will obtain from third parties, including State and local governments, all licenses and permissions necessary for the performance of the work. The Contractor shall comply with policies, rules, and regulations of the District, including but not limited to, the following:

(i) The District's plan for English Language Learners;

- (ii) The District's Code of Student Conduct;
- (iii) The District's Student Progression Plan;
- (iv) The District's State-approved Special Programs and Procedures Plan (for exceptional education students);
- (v) Operate the School on the same calendar as the District's calendar for District schools.

(d) The Contractor must maintain adequate and current records for the Services in the manner consistent with applicable legal requirements and consistent with the District's prior practices, including but not limited to the Contractor's use of the District's student information system to input student data (including but not limited to attendance, discipline, grades, scheduling, and enrollment in order to generate FTE for the Florida Education Finance Program and other state and federal revenue); and the Contractor will use the District's SEAs platform for ESE and 504 as applicable; and the District's SAP system as applicable;

(e) The Contractor will cause the students to participate in all state required assessments and comply with state reporting requirements, and the Contractor will comply with requirements of any student's IEP, 504, or EP (e.g., accommodations or an alternative assessment, as the case may be), and will comply with state reporting requirements associated with the same;

(f) If the Contractor purchases any furniture, fixtures, supplies, or equipment using public funds, then the same must not be subject to any liens; in addition, such property will be the property of the District and made available to the District to inventory.

(g) The Contractor will enroll students according to the requirements of law (e.g., open enrollment), and according to the requirements of the District pursuant to attendance boundaries and the requirements of law; and the Contractor will comply with class size requirements;

(h) The Contractor will operate the School in compliance with federal and state grants applicable to the School, and cooperate with the District concerning any information required for compliance with federal and state grant funds;

(i) The Contractor will operate the School in a manner that protects the health, safety, and welfare of the students;

(j) The Contractor will implement the school advisory committee according to the requirements of law;

(k) The Contractor will implement a schedule of professional development for the School's leadership, instructional, and other personnel (the Contractor may utilize the District's professional development, utilize Contractor's professional development, or a combination);

- (l) The Contractor will reasonably cooperate with the District concerning the District's maintenance and renewal of the District's accreditation; and,
- (m) At no additional cost to the Contractor, the Contractor agrees to reasonably assist the District if any service required to operate the School or required by law is omitted from this Agreement; it being understood that the parties will mutually cooperate to ensure continuity of operations of the School.
- (n) The Contractor shall be responsible for recruitment, selection, and placement of instructional personnel with proven experience and capacity to serve students who may need intensive remediation and instruction.
- (o) The Contractor shall be responsible for the recruitment, selection, placement, training, and oversight of the school leadership team.
- (p) At no additional cost to the District, with sufficient reasonable notice, the Contractor agrees to reasonably assist the District in dealing with the Florida Department of Education as well as the State Board of Education including attending State Board of Education meetings regarding Evergreen Elementary School. Also, Contractor agrees to reasonably assist with and participate in the site visits and reporting requirements by the DOE. The District will be responsible to notify the Contractor in advance of any State Board of Education meetings regarding Evergreen Elementary School and will provide the Contractor with a schedule of Differentiated Accountability Team visits to Evergreen. If a schedule of Differentiated Accountability team visits is not available, Contractor should be consulted on an acceptable date(s) and time(s) to prevent any material disruption to operations of Evergreen Elementary School.

7. Duties of the District.

- (a) For all purposes, the District is the Local Education Agency ("LEA"). Nothing in this Agreement is intended to, delegate the District's responsibilities as LEA to the Contractor.
- (b) The District will provide the Contractor with adequate work areas and equipment, as reasonably deemed necessary by the Contractor, for the Contractor to perform the services at the School, as well as adequate work areas for the Contractor's delivery of professional services.
- (c) The District will provide support services as follows:
  - (i) The District will provide the physical plant, furniture, fixtures, equipment, and supplies for the School operations, and the District will maintain the same in working condition; however, the parties understand and agree that: (A) the District may continue to use a designated portion of the facility for District offices, and (B) that the Contractor agrees to follow District policy for Student assignment;
  - (ii) The District will provide custodial services according to the same standards as provided for other District schools during the school year, and the District will pay for and maintain utilities for the School according to the

same standards as provided for other District schools during the school year (e.g., electric, telephone, water and sewer);

(iii) The District will provide the same standard of technological infrastructure to the School to enable the Contractor to support and administer all required online test administrations, to input student data into the District's student information system, input student data into the District's SEAs platform, and input data into the District's SAP system;

(iv) The District will provide meal service to the School's students in compliance with the USDA meal requirements and Federal and State Child Nutrition Standards (e.g., breakfast and lunch according to the requirements of USDA as administered by the Florida Department of Agriculture);

(v) The District will provide transportation to the School's students according to the same standards as the District provides for other District school during the school year;

(vi) The District will provide school resource officer support to the School according to the same standards as the District provides to any other elementary school in the District;

(vii) The District will provide health services to the School according to the same standards as the District provides for other District schools during the school year;

(viii) The District will cooperate with the Contractor to implement the school advisory committee;

(ix) The District will continue to be responsible for compliance with all duties and obligations that it has as the LEA under applicable laws relating to services provided to students with disabilities, including exceptional education and Section 504. The District will provide staff and services for the School's students with disabilities in substantially the same manner as the District provides such staff and services to other District schools and in compliance with law. The District will provide such staff and services in manner that is consistent with the School's academic program and general operations.

(x) The District will continue to provide English as a Second Language services and support to the School's students in the same manner that it provides to other District schools.

(xi) The District will make available to the Contractor the District's professional development (and materials) on the same basis as is available to the District's employees; there will be up to 5 days of Early Return for a teacher orientation and training before the beginning of the school year, which will be conducted by the Contractor.

(xii) The District agrees to reasonably assist the Contractor if any

service required to operate the School or required by law is omitted from this Agreement; it being understood that the parties will mutually cooperate to ensure continuity of operations of the School.

8. Personnel.

(a) Recognizing that the District engages Contractor based on the experience, knowledge, skills, and abilities of its personnel, the Contractor's personnel for the Services (including title and hourly rates) is to be determined by Contractor. Contractor personnel may not provide any services until District provides Contractor with notice of clearance in accordance with the Jessica Lunsford Act, and issues official School District badges. Contractor must provide to the District the resume/biography of each of Contractor's personnel assigned to the School for the District's review and approval according to the criteria in Section 29 of this Agreement. Contractor will not transfer or replace such personnel without the prior written consent of the District, which consent may be withheld in its reasonable discretion.

(b) The Parties acknowledge that pursuant to section 1001.42(21), Fla. Stats. (2019), an educational emergency exists with respect to the School. This Agreement is governed by, that certain executed Memorandum of Understanding between the District and Marion Education Association (the MEA/MESP MOU"), attached to this Agreement as Exhibit C which addresses the selection, placement and expectations of instructional personnel and provides autonomy to school principals as outlined in section 1012.28(8), Fla. Stats. (2019). Nothing in this Agreement is to be construed or interpreted to supersede the obligations of the District to bargain compensation, working conditions and other mandatory bargaining issues.

(c) The District will continue to provide operational Human Resource services to include processing of applicants, ensuring certification compliance, conducting background screenings, maintaining employment records, and investigating allegations of employee misconduct. Matters involving employee grievances will be governed by existing District policies and applicable collective bargaining agreements.

(d) The District will serve as the fiscal agent and will pay the salaries and benefits of District employees assigned to the School in accordance with the District's approved compensation schedules. Primary management of personnel, to include selection, placement, and evaluation of school-based instructional, administrative and support staff will be provided by the Contractor. All School staff will be selected through an interview protocol established by the Contractor. Teachers with end of year state VAM data in the Needs Improvement or Unsatisfactory range will not be eligible to remain at the School. In the event that an individual is not selected to remain at the School by the Contractor or otherwise elects to voluntarily surplus or transfer out of the School, the District will make every effort to reassign the employee to another District school. However, nothing herein is to be construed to create a guarantee of employment or otherwise expand rights not currently guaranteed by law. To assist the Contractor with identification and placement of staff, the District will make available its personnel systems and structures at a level comparable to other District schools.

(e) The Contractor will implement the provisions of the Turnaround Option Plan regarding the selection of the School's administrators according to the requirements of law. If the School's principal and assistant principal(s) leave their positions, the Contractor will consult with the District regarding the identification and selection of eligible candidates for the School's principal and assistant principal(s), and the Contractor will have final authority regarding the engagement of the School's principal and assistant principal(s).

(f) Instructional and other eligible staff will continue to utilize the District's then-current provider of substitute services for substitute personnel.

(g) For consistency with evaluations of personnel, all formal evaluations will utilize the District's current state approved evaluation system for formal evaluation of personnel, and all formal evaluations will be performed by district staff. Additional monitoring systems may be utilized to provide teachers performance feedback.

9. Curriculum and Instruction.

(a) The Contractor will improve the School in terms of student performance on FSA and school grade while implementing next generation instructional systems that will build the capacity of the School to sustain and continue its own improvement in preparation for returning the School to District control as stipulated in this Agreement. Instructional delivery models must include Multi-tiered Systems of Support (MTSS) in accordance with federal and state laws and the District's Student Progression Plan.

(b) The Contractor has reviewed the District's curriculum and instructional materials and the Contractor agrees to utilize and implement the same. If, however, the Contractor determines that revisions are required, then Contractor will provide prior written notice to the District, and the Contractor will be responsible for the selection of instructional materials (including the major tools of instruction, ancillary materials and supplemental materials) in full compliance with all legal requirements. If the purchase of the instructional materials cannot be borne by the District pursuant to the School's budget allocation, then in such event, and subject to the availability of funds, the cost of the acquisition will be borne by the District. In addition to the foregoing, Contractor may elect to utilize the District's curriculum and instructional materials but nonetheless select supplemental materials that are aligned to the current curriculum; in such event Contractor will provide prior written notice to the District, and if the purchase of the supplemental materials cannot be borne by the District pursuant to the School's budget allocation, then Contractor, at its sole option and cost, will have the right to purchase such supplemental materials.

(c) The Contractor will have full access to all Professional Development provided by the District to other district employees and will provide additional specific instructional and leadership training to School employees.

(d) The District will continue to provide supplemental academic services to students at the School in a manner consistent with services provided to other



District schools during the school year, however agreements with external providers will be governed by existing contract terms.

(e) The Contractor agrees to use the District's established interim/ benchmark assessments and statewide summative assessments. If, however, the Contractor determines that alternative benchmark/assessments are required, then Contractor will provide prior written notice to the District for the District's review and consent (which will not be unreasonably withheld), and the Contractor will be responsible for the selection of alternative benchmarks and assessments in full compliance with all legal requirements and the cost of the acquisition will be borne by the Contractor. In addition, the Contractor may utilize additional progress monitoring systems to assess evidence of student learning.

(f) The Contractor agrees to implement the District's curricular programs (including but not limited to choice/magnet programs, tutoring, before and after care programs, and any programs implemented by the District or any third party) as the District provided for the School for the 2018-2019 school year. Except for the curricular program expressly identified in section 7(c) above (if any), if the Contractor determines that any elements of the District's provision of curricular programs do not contribute to the Contractor's services at the School, then the Contractor will provide written notice to the District and the parties agree to expediently collaborate regarding a resolution. After such collaboration, if the Contractor determines that it desires to opt out of the District's identified curricular program, then the Contractor will provide written notice to the District to remove such curricular program from the School.

(g) The Contractor agrees to provide leadership development to train staff to maximize grant spending. The leadership development must include how to monitor grant expenditures to ensure that over-spending or under-spending is addressed before the end of grant periods, and must train staff on how to prepare required financial and program process reports in accordance with the use of grant funding.

10. Term; Renewals. The term of this Agreement commences July 30, 2019, and ends at the end of the business day on June 30, 2020. There shall be one (1) potential annual renewal for the 2020-2021 school year. The District will notify the Contractor in writing of its option to exercise any annual renewal no later than before the commencement of the next renewal term, and if renewed, the fees will be as outlined in Exhibit B. Further, the effectiveness of any exercised renewal term is subject to the same conditions described in section 2 above (it being understood, for example, that if any of the conditions set forth in section 2 occur, then this Agreement will terminate according to the provisions of section 2 above).

11. Fees and Expenses.

(a) The Contractor will be compensated for services rendered. For all the services actually, timely, and faithfully rendered by Contractor, the District agrees to pay Contractor for the services set forth in Exhibit B, in an aggregate maximum indebtedness amount not to exceed two hundred seventy thousand dollars and 00/100 (\$270,000.00). Contractor will remit a proper invoice for the component of service described in Exhibit B in such form and containing such documentation

as may reasonably be required by the District to substantiate the charges (including timesheets, meeting agenda, training materials, and other artifacts), and such invoice will be delivered according to the schedule specifically set forth in Exhibit B. The District will make payment to Contractor in accordance with Sections 218.70. et sq. Fla. Stats. (2019), Local Government Prompt Payment Act, after receipt of an acceptable invoice, inspection, and acceptance of goods or services provided in accordance with the terms and conditions of this Agreement. Any penalty for delay in payment will be in accordance with applicable law. Contractor is responsible for payment of its travel, if any.

(b) Performance Guarantee. Contractor agrees that eighty-nine thousand one hundred dollars and 00/100 (\$89,100) of the maximum indebtedness stated in paragraph 11(a) of this Agreement will be held as a Performance Guarantee. If Evergreen Elementary School achieves a school grade of C or higher for the 2019-2020 school year pursuant to the State's release of school grades, Contractor shall invoice the District for the amount held as its Performance Guarantee. If Evergreen Elementary School fails to achieve a school grade of C or higher for the 2019-2020 school year pursuant to the State's release of school grades, the Contractor's Performance Guarantee funds will be forfeited. The potential final payment to Contractor of \$89,100 is subject to the District's allowance of Contractor to fully implement its turnaround plan for the school. Contractor is obligated, and understands and agrees, that it must send written notice to the District if the Contractor is unable to implement its turnaround plan based on the actions or inactions of the District. Such notice shall comply with the formalities set forth in section 21 of the Agreement, and set forth with specificity the basis of the Contractor's claim, and the Contractor shall provide the District ten (10) business days to cure Contractor's claim. If the District receives notice from the Contractor and fails to timely cure the Contractor's claim, then regardless of the School's grade for school year 2019-2020 the District shall remit the final payment to the Contractor in the amount of \$89,100.

(c) Additional Funding (Allocations per School) - The District will provide all funding or services that the School would normally receive, such as entitlement funding (e.g. Title I, Parts A, C, D; Title II, Part A; Title III; Title IV, Parts A and B; Title IX, Part A). The District will also ensure that the School is included in the needs assessment process for applications for competitive grant funding as appropriate to its needs. The District shall provide Contractor with a detailed budget.

(d) The District is using federal funds for its payment for certain of the services outlined in this Agreement; accordingly, Contractor will execute and deliver to the District, concurrent with its signature of this Agreement the following, all of which is incorporated into this Agreement by this reference: (a) Federal Regulatory Compliance Statement; (b) Certification Regarding Drug-Free Workplace Requirements; (c) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; and (d) Non-Collusion Affidavit. The federal forms are attached hereto as composite Exhibit D and incorporated herein by this reference.

(e) Notwithstanding the foregoing, the Contractor acknowledges that the District is required by FDOE to enter into this Agreement; accordingly, the Contractor agrees to reasonably cooperate and provide (and will not unreasonably

withhold, condition or delay) any information reasonably required for the District's reporting and compliance with the requirements of FDOE for the School. The District is not obligated to compensate Contractor for, and the Contractor is not obligated to provide, services to be performed after termination of this Agreement, or if the Contractor performs the services in a manner that causes the District to not be in compliance with the requirements of FDOE regarding the School.

(f) Each payment obligation of the District created by this Agreement is conditioned upon the availability of funds that are appropriated or allocated for the payment of services or products. If such funds are not allocated and available, this Agreement may be terminated by the District at the end of the period for which funds are available. The District will notify the Contractor at the earliest possible time before such termination. No penalty will accrue to the District in the event this provision is exercised, and the District will not be obligated or liable for any future payments due or for any damages as a result of termination under this section beyond reimbursement for actual fees earned by the Contractor through the termination date.

12. Default; Termination.

(a) District Default. The District will be in default if any of the following happens:

(i) The District fails to make any payment when due.

(ii) The District fails to perform promptly at the time and in the specified manner provided in this Agreement.

(b) Contractor Default. The Contractor will be in default if the Contractor fails to perform promptly at the time and in the specified manner provided in this Agreement.

(c) Termination. This Agreement may be terminated (i) immediately upon written notice of breach of any party by the other party and the breaching party fails to cure the breach within ten (10) business days of such notice, or if such breach cannot reasonably be cured within 10 business days that the cure has commenced within such time and is completed within thirty (30) days of such notice (or such other time period to cure a breach as may be expressly set forth in this Agreement), or (ii) notwithstanding anything to the contrary herein, by the District for convenience upon ninety (90) days prior written notice to the Contractor. If this Agreement is terminated for convenience as provided herein, the District will be relieved of all obligations under this Agreement, and the District will only be required to pay to the Contractor that amount of work under this Agreement actually performed to the date of termination. Access to any and all work papers and data collected will be provided to the District after the termination of this Agreement. The parties understand and agree that the Contractor will in no event have the reciprocal right to terminate this Agreement; it being understood that the District's payment of this Agreement's fees forms the consideration for the Contractor not having this right to terminate for convenience. In the event of a termination pursuant to this subsection (c)(i) or subsection (c)(ii), notice will be delivered to the other party pursuant to the Notices section outlined hereafter.

13. Contractor Representations. Contractor represents that: (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) it is authorized and in good standing to conduct business in the State of Florida; (iii) it has all necessary power and has received all necessary approvals to execute and perform its obligations in this Agreement; and (iv) the individual executing this Agreement on behalf of Contractor is authorized to do so.

14. Indemnification. Subject to the limitations of §768.28, Fla. Stats. (2019), the District agrees to indemnify and hold harmless Contractor from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of the District in connection with the provisions of this Agreement. Contractor agrees to indemnify, hold harmless and defend the District from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of Contractor or its subcontractors in connection with the provisions of this Agreement.

15. Insurance Requirements. The District certifies that it is self-insured pursuant to the provisions of §768.28(16), Fla. Stats. (2019), for tort liability in anticipation of any claim which it might be liable to pay pursuant to that section. Worker's compensation coverage is also self-insured at levels conforming to statutory requirements. Such liability and workers' compensation self-insurance supersedes any insurance obligation imposed on the District in this Agreement. The District will ensure that Contractor receives immediate notification of reduction in or cancellation of coverage. Contractor agrees to maintain insurance coverage according to the types and levels of insurance outlined in Exhibit E attached hereto and incorporated herein by this reference.

16. Student Records. Contractor understands and agrees that it is subject to all federal and state laws and Board Policies relating to the confidentiality of student information. Contractor further agrees to comply with the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. §99. The District recognizes and agrees that Contractor is a "school official" with a "legitimate educational interest" under the definition of those terms in the District's FERPA notification(s) to students and parents. Contractor shall regard all student information as confidential and will not disclose the student information to any third party. Contractor agrees to develop, implement, maintain, and use appropriate administrative, technical, or physical security measures to the full extent required by FERPA in order to maintain the confidentiality of "education records" as that term is defined by FERPA. Upon termination of this Agreement, the Contractor will, at the election of the District, either destroy or return to the District, all such information in its possession, if any, and confirm the same in writing to the District.

17. Governing Law; Venue; Attorneys' Fees. This Agreement and all transactions contemplated hereunder are governed by, and construed and enforced by, the laws of the State of Florida without regard to principles of conflicts of laws. Venue for any litigation related to this Agreement will be in Marion County, Florida.

18. No Third Party Beneficiaries. Nothing in this Agreement provides consent by any agency or political subdivision of the State of Florida to allow any person or entity not a party to this Agreement to sue, including, but not limited to, any citizen or employees of the Contractor or District, in any matter arising out of this Agreement, or to confer any rights on any third party to allow any claim otherwise barred under the doctrine of sovereign immunity or by operation of law.

19. Subcontractors. If Contractor subcontracts any of the services, Contractor will ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services outlined in this Agreement.

20. Public Records. Contractor understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws relating to records retention.

(a) To the extent that Contractor meets the definition of "contractor" under § 119.0701, Fla. Stats. (2019), and in addition to other contract requirements provided by law, the Contractor agrees that it is acting as a contractor on behalf of District as provided under § 119.0701(a), Fla. Stats. (2019) and as such it will comply with Florida's Public Records Law. Specifically, Contractor agrees that it will:

- i. Keep and maintain public records that ordinarily and necessarily would be required by District to perform the services performed by Contractor under contract;
- ii. Provide the public with access to such public records on request from District's custodian of public records;
- iii. Provide District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- iv. Ensure the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency;
- v. Upon completion of the contract, transfer, at no cost, to District all public records in possession of Contractor or keep and maintain public records required by the public agency to perform the service. If Contractor transfers all public records to the public agency upon completion of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to District, upon request from District's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**(b) IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF RECORDS AT: PUBLIC RELATIONS AND COMMUNICATION OFFICER: KEVIN CHRISTIAN, APR, CPRC, AT (352) 671-7555, PUBLIC.RELATIONS@MARION.K12.FL.US OR IN PERSON AT 420-A SE ALVAREZ AVENUE, OCALA, FLORIDA 34471.**

21. Notices; District Contract Administrator. Every notice, approval, consent or other communication authorized or required by this Agreement will not be effective unless same is in writing and sent via hand delivery or overnight delivery (with a receipt), directed to

the other party at its address provided below or such other address as either party may designate by notice from time to time in accordance herewith:

If to Contractor:

Jayne Ellspermann  
Jayne Ellspermann, LLC  
2403 SE 19<sup>th</sup> Circle  
Ocala, Florida 34471  
School Leadership Development  
JayneEllspermann@gmail.com  
352-598-4782

If to the District:

The School Board of Marion County, Florida  
512 SE Third Street  
Ocala, Florida 34471  
Phone: (352) 671-7702  
Attn: Kelly King, Board Chair

With copy to:

Paul Gibbs, School Board Attorney  
512 SE Third Street  
Ocala, Florida 34471

Notwithstanding the foregoing, the parties agree that all communications relating to the day-to-day activities must be exchanged between the respective representatives of the District and the Contractor as follows. Each party's representative will coordinate communications and processes as needed for the purposes of conducting the services outlined in this Agreement, as well as the process for routine or administrative communications. The parties will also reasonably cooperate as to the development (including content, format, and required deliverables) of the invoicing and any reports to be provided by Contractor as part of the services outlined in **Exhibit B**. For purposes of the District's representative for the day-to-day activities, the District's Contract Administrator shall be:

Marion County Public Schools  
Attn: Superintendent Heidi Maier, Ed.D.  
512 SE Third Street  
Ocala, Florida 34471

22. Indemnification for Copyright Infringement. Contractor will defend, indemnify and hold the District and its successors and assigns harmless from and against all third-party claims, suits and proceedings and any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) incurred as a result of (i) infringement by Contractor of any third-party patent, copyright or trademark or (ii) misappropriation by Contractor of any third-party trade secret in connection with any of the foregoing.

23. Intellectual Property Rights.

(a) Contractor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement. Contractor will indemnify and hold harmless the District from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used

in the performance of this Agreement, including its use by the District. If Contractor uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exception that the proposal prices will include all royalties or costs arising from the use of such design, device or materials in any way involved in the work.

(b) Any of the teaching methods, ideas, concepts, presentation, or products utilized during the course of the presentations and instructions of Contractor, are wholly owned by Contractor. It is understood that the materials and processes espoused by Contractor in its presentations and teachings are the exclusive intellectual property of Contractor and remain so even when employed by any parties to this Agreement, their agents, assigns, employees, independent contractors, or any other person associated with this Agreement. It is further agreed that the District, its members, employees, agents, and assigns will be granted fair use of the ideas and techniques employed by Contractor during the term of this Agreement and it will not be considered infringement on the intellectual property rights of Contractor for them to do so. Notwithstanding the foregoing, the parties acknowledge that the District is an agency subject to the provisions in Chapter 119, Fla. Stats. (2019) regarding public records and will fully comply with all requirements regarding access thereto. If Contractor considers any of its proprietary information to constitute a "trade secret" as defined by section 812.081(1)(c), Fla. Stats. (2019) (which would be exempt from disclosure under the Public Records Act, Chapter 119, Fla. Stats. (2019), and Article I, section 24 of the Florida Constitution pursuant to sections 815.045 and 812.081, Fla. Stats. (2019), then Contractor agrees to add the following language (hereinafter referred to as the "Legend") on every page of its confidential information provided to the District in hard copy: "This information is confidential trade secret information exempt from disclosure under the Public Records Act, Chapter 119, Florida Statutes, and Article I, section 24 of the Florida Constitution pursuant to section 815.045 and 812.081, Fla. Stats. (2019)."

(c) Further Agreements Concerning Intellectual Property:

(i) Ownership of Contractor's Intellectual Property: Both parties agree that all discoveries, inventions, improvements, methods, works of authorship, trademarks, service marks, technology, computer programs, databases, trade secrets, confidential information, patents, copyrights, and any other forms of intellectual property (whether or not reduced to practice or writing) (collectively, "Intellectual Property") created or developed by employees or agents of Contractor ("Contractor Personnel"), excluding any District personnel, during the term of this Agreement will be owned exclusively by the Contractor ("Contractor Intellectual Property").

(ii) Ownership of District Intellectual Property: Pursuant to this Agreement, the District assigns certain of its employees ("District Personnel") to perform services for the Contractor at the School. Both parties agree that all Intellectual Property that District Personnel create or develop while performing services at the Schools or for the Contractor will be owned exclusively by the District ("District Intellectual Property").

(iii) License of District Intellectual Property: The District hereby grants to the Contractor a non-exclusive and royalty-free license to use products and services embodying District Intellectual Property for Contractor's use at the School for the services outlined in this Agreement and not otherwise. Although the above license is non-exclusive, this is intended to ensure that the District retains the right itself to commercialize and sell to third parties the District Intellectual Property.

(iv) Ownership of Joint Intellectual Property: If any item of Intellectual Property is developed jointly by Contractor Personnel and District Personnel, such that, pursuant to applicable law, such item of Intellectual Property is jointly owned by the parties ("Joint Intellectual Property"), the parties hereby agree to such joint ownership of such item of Joint Intellectual Property.

(v) Division of Net Revenue: The parties acknowledge that section 1012.985(2)(b), Florida Statutes, requires the parties to share income generated by certain Intellectual Property as the parties mutually agree. To that end, the parties agree that any commercialization of Joint Intellectual Property by either party will be subject to an equal division of net revenue between the Contractor and the District. If the Contractor sells any Joint Intellectual Property licensing rights, then the Contractor will pay to the District its portion of the net revenue received on an annual basis when the Contractor provides its last report to District as required by this Agreement. If the District sells any Joint Intellectual Property licensing rights, the District will pay to the Contractor its portion of net revenue received on an annual basis within thirty (30) days of the close of the District's fiscal year. For purposes of this section, "net revenue" means all value (e.g., upfront payments, milestone payments, royalties, other cash payments, and non-cash items) received by either Party from the sale, license or other commercialization of Joint Intellectual Property, minus the party's out-of-pocket costs and expenses directly attributable to such sale, license or other commercialization transactions, including, without limitation, broker fees, legal fees, commissions, travel expenses, refunds, chargebacks, taxes (other than the party's income taxes), third-party royalties, duties, governmental fees, insurance, rebates, allowances, and the like, as and when applicable. For clarification, there will be no revenue division with respect to commercialization of any District Intellectual Property, and no revenue division with respect to commercialization of any Contractor's Intellectual Property. Likewise, if Contractor Personnel create or develop Intellectual Property at the direction of the Contractor outside the context of performance of services pursuant to this Agreement, then there will be no revenue division with respect to commercialization of that Intellectual Property. And likewise, if any District Personnel create or develop Intellectual Property at the direction of the District outside the context of performance of services pursuant to this Agreement, then there will be no revenue division with respect to commercialization of that Intellectual Property.

(vi) Cooperative Efforts in Commercialization: In light of the fact that each party will have the ability to commercialize the Joint Intellectual



Property, the parties agree that they shall work together reasonably and in good faith in an effort to prevent any direct competition or conflict between their respective commercialization efforts.

(vii) **Return of Property:** Upon termination of this Agreement for any reason, the District shall return to the Contractor within thirty (30) days any and all materials provided by the Contractor which constitute the Contractor's intellectual property as set out in this Agreement. Likewise, the Contractor shall return to the District any and all materials provided by the District which constitute the District's intellectual property as set out in this Agreement.

24. **No Discrimination.** The Parties agree that no person will be subjected to discrimination because of age, race, color, disability, pregnancy, gender, marital status, national origin, or religion, in the performance of the Parties' respective duties, responsibilities, and obligations under this Agreement.

25. **Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the remainder of this Agreement will not be affected thereby; and in lieu of each clause or provision of this Agreement which is illegal, invalid or unenforceable, there will be added, as part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and as may be legal, valid and enforceable.

26. **No Assignment.** Neither this Agreement, nor any portion thereof may be assigned by Contractor, in whole or in part, without the prior written consent of the District.

27. **Survival.** Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this Agreement, including, by way of example only, the Indemnification and Confidentiality provisions, will survive the expiration, cancellation, or termination of this Agreement.

28. **No Gifts.** It is the policy of the District to not accept gifts, gratuities, or favors of any kind or of any value whatsoever from vendors, members of the staff, or families. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual for firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. Contractor further warrants that it, nor any of its directors, employees, officers or agents, nor any of Contractor's respective subsidiaries or affiliates, has taken, is currently taking or will take any action in furtherance of an offer, payment, promise, gifts or anything else of value, directly or indirectly, to anyone to improperly influence or otherwise secure any improper advantage in procuring business in relation to this Agreement. For the breach or violation of these provisions, the District shall have the right to terminate this Agreement without liability and/or, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

29. Former District Employees. Pursuant to District Policy all bidders, proposers, consultants, and contractors are required to disclose the names of any of their officers, directors, agents, or employees who serve as agents or principals for the bidder, proposer or contractor, and who within the last two (2) years, have been or are employees of the District. And all bidders, proposers, consultants, and contractors are required to disclose the name of any District employee who owns, directly or indirectly, any interest in the Contractor's business. Such disclosures will be in accordance with current District policies, but will include, at a minimum, the name of the former District employee, a list of the positions the employee held in the last two (2) years of his or her employment with the District, and the dates the employee held those positions. By its signature on this Agreement, Contractor certifies to the District that there are no names to disclose to the District pursuant to this section.

30. Background Screening. All Contractor employees, appointees, or agents who come into contact with students at the Contractor's facility as part of this Agreement must submit a Level 2 background check in a manner prescribed by the District, at Contractor's expense (if any). Contractor shall not permit persons to provide services to students under this Agreement if any such persons do not meet the background screening requirements of the District for Contractor employees at the Contractor's location. Notwithstanding the foregoing, if the services are provided by the Contractor at a District location, then the requirements of Level II screening outlined in the Jessica Lunsford Act (JLA) will be applicable, and the Contractor will bear the expense of the JLA screening. Failure to comply with this provision will be cause for immediate termination of this Agreement.

31. Publicity. Contractor shall not use the District's name, logo, or other likeness in any press release, marketing materials, or other public announcement without receiving the District's prior written approval. Contractor shall not host or stage events at District locations without receiving prior approval by the District Contract Administrator.

32. Entire Agreement. This Agreement constitutes the final, complete, and entire Agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether written or oral. There are no representations or other agreements included. No supplemental modification or waiver of this Agreement will be binding unless executed in writing by the parties to be bound thereby.

33. Amendments. This Agreement may be amended at any time by mutual agreement of the parties. However, before any amendment will be operative or valid, it must be reduced to writing and signed by both the District and the Contractor.

34. Inspector General Audits. Contractor and its subcontractors (if any), shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General or by any other Florida official with proper authority.

35. Representations & Warranties. Contractor represents and warrants to District under this Agreement that:

(a) Contractor is not bound by any other contract, agreement, business relationship or another arrangement that would preclude it from entering into, or from fully performing, the services required under this Agreement;

(b) Contractor affirms and certifies that none of Contractor's agents, employees or officers have ever had his or her professional license or certification in the State of Florida, or of any other jurisdiction, either denied, suspended, revoked, terminated or voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(c) Contractor affirms and certifies that it has not been convicted of a public entity crime as provided in § 287.133, Fla. Stats. (2019), to wit: A person or affiliate who has been placed on convicted vendor list following a conviction for public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in § 287.017, Fla. Stats. (2019) for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list;

(d) Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority over its business activities, including but not limited to Chapter 287, Florida Statutes (2019), and Fla. Admin. Code R. 60A. Contractor shall further comply with Section 274A [8 U.S.C. 1324a] of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination. Violation by Contractor of any laws, rules, codes, ordinances, or licensing requirements will constitute, on the date and time of any such violation, a material breach of this Agreement and serve as grounds for termination or nonrenewal of this Agreement; and

(e) The Parties must comply with the code of ethics for public officers and employees, Chapter 112, Fla. Stats. (2019).

35. Certifications. Contractor certifies, to the best of its knowledge and belief, that neither Contractor nor its principals:

(a) Are debarred, suspended, proposed for debarment, declared ineligible from operating, or voluntarily excluded from participation in covered transactions by any federal, state, or local department or agency.

(b) Have, within the five-year period before this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under 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 presently indicted or otherwise criminally charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph B.

(d) Have, within the five-year period before this Agreement had one or more public transactions terminated for cause or default.

Contractor shall notify District within thirty (30) days after occurrence of any of the events, actions, debarments, proposals, exclusions, convictions, judgments, indictments, or terminations as described in paragraphs (a-d) above, concerning Contractor or its principals.

36. E-Verify. In accordance with Executive Order 11-116, Contractor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.

37. Force Majeure. Neither Party are obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either Party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event will a lack of funds on the part of either Party be deemed Force Majeure.

38. Equal Employment Opportunity. If this Agreement involves Federal funds more than \$10,000, Contractor must be in compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 C.F.R. Chapter 60).

39. Clean Air Act. If this contract involves Federal funds and is over \$100,000, Contractor must comply with all applicable standards, orders, or regulations of the Clean Air Act, as Amended (42 U.S.C. chapter 85) and the Clean Water Act, as amended (33 U.S.C. chapter 26), Executive Order 11738, and Environmental Protection Agency regulations codified in Title 50 of the Code of Federal Regulations. Contractor must report any violations of the above to the District.

40. Byrd Anti-Lobbying Amendment. If this Agreement is in excess of \$100,000, Contractor shall comply with all applicable standards, orders, or regulations, including but not limited to:

- (a) Certification Regarding Lobbying pursuant to 31 U.S.C. 1352 (Appendix A: 7 C.F.R. Part 3018); and
- (b) Disclosure of Lobbying Activities pursuant to 31 U.S.C. 1352 (Appendix A: 7 C.F. R. Part 3018).

41. Counterpart and Facsimile Signatures. This Agreement may be executed in one or more counterparts and via facsimile signature, the counterparts and facsimiles of which, when taken together, shall be deemed to constitute an entire and original Agreement.

42. No Waiver of Sovereign Immunity. This Agreement does not waive sovereign immunity by any agency or political subdivision to which sovereign immunity may apply, or of any rights or limits of liability existing under § 768.28, Fla. Stat. (2019). This term survives the termination of all performance or obligations under this Agreement and is fully

binding until any applicable statute of limitations bars any proceeding brought under this Agreement.

43. Legal Authority. Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party concerning all provisions contained in this Agreement.

*[Signatures follow on next page]*


[Signature page to Agreement for Professional Services between The School Board of Marion County, Florida, and Jayne Ellspermann, LLC, dated July 30, 2019]

The parties have executed this Agreement as of the Effective Date first set forth above.


Jayne Ellspermann, LLC

By:   
Jayne P. Ellspermann, Manager

ATTEST:

By:   
Heidi Maier, Ed.D.,  
Superintendent of Schools  
and Ex-Officio Secretary  
to the Board

THE SCHOOL BOARD OF MARION  
COUNTY, FLORIDA

By:   
Kelly King, Board Chair

Form Approved:

Approved by Board:

By:   
Paul Gibbs, School Board Attorney

EXHIBIT A  
TURNAROUND OPTION PLAN – STEP 2 (TOP-2)

THIS CONTRACT WILL SERVE AS EXHIBIT 1 TO THE  
TURNAROUND OPTION PLAN – STEP 2 (TOP-2)



FLORIDA DEPARTMENT OF  
**EDUCATION**  
fldoe.org



**TOP-2**



## **Turnaround Option Plan—Step 2(TOP-2)**

**External Operator/Outside Entity (EO)**

[Marion]  
[Evergreen Elementary School]

Form Number TOP-2, EO, incorporated in Rule 6A-1.099811, F.A.C., effective August 2018



## Turnaround Option Plan—Step 2 (TOP-2)

### External Operator/ Outside Entity

*Due: October 1 for Cycle 1 or January 31 for Cycle 2-4*

#### Purpose

The purpose of this document is to guide districts to develop a plan for implementation of the turnaround option External Operator/Outside Entity (EO). The district shall provide the Department with this plan for approval by the State Board of Education (SBE).

#### Directions

Districts shall complete this Step 2 form for each school for which the district is selecting EO. This completed form must be signed by the superintendent or authorized representative and emailed to [BSI@fldoe.org](mailto:BSI@fldoe.org) no later than October 1 if Cycle 1 or January 31 if Cycle 2-4. The subject line of the email must include district name, school name and TOP-2(EO).

#### School

In the box below, identify the name and MSID number of the school that will be supported through EO.

School Name/ MSID Number
Evergreen Elementary School / 0581

#### EO Assurances

The district must agree to ALL of the following assurances by checking the boxes below.

##### Assurance 1: Selecting a Successful EO

The district shall select an EO that has a record of school improvement in turning around schools that are high-poverty and low-performing with students of similar demographics.

##### Description of how the district will address Assurance 1: Selecting a Successful EO

The School Board of Marion County, Florida, (hereinafter "School Board") executed a 2-year contract with Educational Directions as an EO for Evergreen Elementary School beginning the 2018-19 school year, as detailed in the original TOP-2. Evergreen's 2019 school grade remained a D. While originally a 2-year contract, the State Board of Education (SBOE) rejected the continuation of the original TOP-2 plan contracting with Educational Directions on July 17, 2019. The SBOE directed Superintendent Maier to submit a new plan post haste.

The school district requested quotes from Turnaround Solutions, Inc., Learning Sciences International, and Jayne Ellspermann, LLC, and the School Board discussed the quotes at its July 23, 2019 meeting. The School Board decided to move forward with drafting a contract with Jayne Ellspermann, LLC to become the EO for Evergreen Elementary which will be presented for approval at the August 21, 2019

**Turnaround Option Plan—Step 2 (TOP-2)  
External Operator/ Outside Entity**

SBOE Meeting. Jayne Ellspermann, LLC was approved by the SBOE as the EO for Oakcrest Elementary on July 17, 2019. A document provided as a part of the SBOE’s approval of Jayne Ellspermann, LLC’s EO Turnaround experience can be found here:

<http://www.fldoe.org/core/fileparse.php/18786/urlt/MARION-Oakcrest-EOExperience.pdf>.

The School Board terminated its contract with Education Directions on July 23, 2019, after the school board meeting the day prior and as a result of the SBOE’s July 17, 2019 meeting.

**Assurance 2: Selecting Leadership**

The district and the EO shall ensure the incoming principal and school leadership team have a successful record in leading turnaround schools and the qualifications to support the population being served.

**Description of how the district will address Assurance 2: Selecting Leadership**

The school district assigned leaders to Evergreen Elementary School for the 2019-2020 school year following the release of the 2019 school grades. The district matched leaders with the level of expertise and highest impact to maximize improvement at Evergreen Elementary School.

The principal, Ashley Kemp, at Evergreen Elementary School has been an administrator for over three years, beginning in March 2015. The district made the decision to place Mrs. Kemp at Evergreen to provide the leadership experience needed to improve student growth and the school grade. Previously, Mrs. Kemp served as principal at Belleview Santos Elementary School from 2018-2019, where the school grade increased from an F to a C. In addition, she served as an assistant principal at Belleview Santos and Dr. N.H. Jones Elementary Schools.

Nicholas Weston began as the assistant principal at Evergreen Elementary in July 2019. Mr. Weston has previously served as a student service manager at Belleview Santos Elementary during the 2018-19 school year where the school grade increased from an F to a C.

Ms. Rometha Gilmore began as the assistant principal at Evergreen Elementary in July 2019. Ms. Gilmore has previously served as a student service manager at Fort King Middle School for the past two years, where the school grade increase from a C to a B, and the 2018-19 school year the school maintained a B grade.

The External Operator has full autonomy to make decisions regarding the selection and retention of the leadership team at Evergreen Elementary School.

**Assurance 3: Selecting Instructional Staff**

The district and the EO shall ensure that teachers rated as Unsatisfactory and Needs Improvement based on the three-year aggregated state Value-added Model (VAM) rating and on the district’s approved evaluation system, pursuant to section 1012.34, F.S., shall not be staffed at the school.

**Turnaround Option Plan—Step 2 (TOP-2)**  
**External Operator/ Outside Entity**

If the district establishes a district-managed charter school, the district shall ensure all instructional personnel are not employees of the school district, but are employees of an independent governing board composed of members who did not participate in the review or approval of the charter.

**Description of how the district will address Assurance 3: Selecting Instructional Staff**

The school district, will assist, at the request of the External Operator, in recruiting staff for Evergreen Elementary School that meets the demonstrated mastery needed to ensure the appropriate levels of staffing. The hiring process occurs at the school level. A screening system is in place to ensure that candidates rated as Unsatisfactory and Needs Improvement based on the three-year aggregated state Value-added Model (VAM), and on the school district's approved evaluation system are not approved to hire or transfer to Evergreen Elementary School.

Any teachers currently at Evergreen Elementary School who earned a 2018-19 rating of Needs Improvement or Unsatisfactory based on the three-year aggregated state Value-added Model (VAM), or the district's approved evaluation system will be transferred to another school within the district. No staff member instructing students will remain at Evergreen Elementary School with a rating of Needs Improvement or Unsatisfactory based on the three-year aggregated state Value-added Model (VAM), or the school district's approved evaluation system.

In an effort to attract and retain Highly Effective teachers, monetary incentives are offered by the School Board and endorsed by the Marion Education Association (MEA). The outlined qualifying criteria is in the Memorandum of Understanding (MOU) that is signed by the Chief Negotiators for the School Board and the MEA. Additionally, monetary incentives offered by the FLDOE UniSIG Supplemental Teacher Allocation to attract and retain Effective and Highly Effective teachers will be maximized for all qualified staff.

The Principal will work with the EO to make decisions regarding selection of instructional staff, and the EO has full latitude to make appropriate hiring decisions.

**Assurance 4: Contracting with the EO**

The district shall enter into a contract with an EO to operate the school following established district policies and procedures. To ensure the district is well positioned in contract negotiations with an EO the following must be addressed in the contract:

1. Services and responsibilities for leadership and instructional staffing, curriculum and instruction, assessments and progress monitoring, professional development and any other identified school improvement areas.
2. The EO has a record of school improvement in turning around schools that are high-poverty and low-performing with students of similar demographics.
3. The role of the EO in the recruitment, selection and placement of instructional personnel with proven experience and capacity to serve students who may need intensive remediation and instruction.
4. The role of the EO in the recruitment, selection, placement, training and oversight of the school leadership team, including specific information about the EO's authority in these areas.

**Turnaround Option Plan—Step 2 (TOP-2)  
External Operator/ Outside Entity**

5. A detailed provision outlining the new or modified services to be provided by the EO if the district had an existing contract with the EO.
6. A detailed budget.

**Description of how the district will address Assurance 4: Contracting with the EO**

As mentioned previously, the School Board has recently entered into an Agreement with Jayne Ellspermann, LLC as the EO for Oakcrest Elementary School, which was approved by the SBOE in July 2019. Jayne Ellspermann, LLC has significant experience as an EO with Turnaround schools as presented at the July SBOE meeting: <http://www.fldoe.org/core/fileparse.php/18786/urlt/MARION-Oakcrest-EOExperience.pdf>.

The School Board will use the existing Agreement for Educational Management Services, which includes language that permits the School Board to terminate the Agreement upon release of the current year’s school grades should the External Operator fail to make progress in its current schools. The Agreement, Exhibit 1, will be presented to the School Board at its July 30, 2019 meeting. The Agreement includes all items required above, and the EO’s proposal and budget, which includes the timeline and payments as well as performance pay is included within Exhibit 1.

The finalized agreement will then be presented to the SBOE for approval at its August 21, 2019 meeting.

**Acknowledgement**

Check the box that applies to the district selection of EO.

- For Cycle 1, the district acknowledges that the plan and the final EO contract is due to the Department by October 1.
- For Cycle 2-4, the district acknowledges that the plan and proposed EO contract are due to the Department by January 31 and the final EO contract is due to the Department by May 1.

<b>Name and title of person responsible for completing and submission of the TOP-2</b>
Tara Huls, Ph.D., Director of Early Learning and Turnaround Schools
<b>Contact information: email, phone number</b>
<a href="mailto:Tara.huls@marion.k12.fl.us">Tara.huls@marion.k12.fl.us</a> ; 352-671-6844
<b>Date submitted to the Bureau of School Improvement</b>
7-30-19
<b>Superintendent Signature (or authorized representative)</b>

**EXHIBIT B**  
**Services**

**Marion County Public Schools**  
**Evergreen Elementary School**

External Operator Proposal and Budget  
Jayne Ellspermann, LLC

<b>Timeline</b>	<b>Description</b>	<b>Deliverable</b>	<b>Cost</b>	<b>Invoicing</b>
<b>Phase 1</b> Preparation for the transition to external operator and the opening of school  July - August 2019	Identify principal and administrative team	Appointment of principal and administrative team.	\$30,002	\$30,002 invoiced no earlier than August 20, 2019
	Vendor application process for contracted staff	Approval of contracted staff		
	Conduct a comprehensive review of academic, attendance, and behavior data for 2017-2018 and 2018-2019.	Detailed listing of all requested data with identification of positive trends and opportunities for improvement		
	Review and support completion of SIP and all budgets.	The completion and submission of SIP and budgets aligning funds to the SIP.		
	Assess school utilization and instructional practices and materials	Completion of room assignment and identification of instructional materials and practices		
	Provide guidance on the completion of the master schedule, review current staff, and recruit to fill vacancies	The completed master schedule, identification of staff to be transferred and filling of vacancies		
	Professional development for the administrative team and instructional staff	Agenda and rosters from the professional development		
	Instructional leadership and staff training and preparation for the opening of school	Teacher, Student, and Parent orientation plans, sign in sheets, agendas		
	<b>Phase 2</b>	Primary oversight and operation of school		

August 2019 – June 2020	functions for the 2019-2020 school year	district status updates on school progress		
August 2019	Filling all instructional vacancies that may occur due to the release of VAM, monitoring and supporting the acquisition of expected practices	Staff roster, initial coaching plans for teachers, beginning of school baseline data	\$13,718	\$13,718 invoiced no earlier than August 30, 2019
September 2019	Onboarding of restorative practices, standards mastery data management, instructional feedback protocol	Identify best practices for replication and opportunities for improvement to target support of restorative practices, standards mastery data management and instructional feedback	\$13,718	\$13,718 Invoiced no earlier than September 30, 2019
October 2019	Blue Ribbon Schools of Excellence survey and assessment of school practices	BRSE Action Plan Blueprint Quarter 1 State Progress Monitor data report, and data analysis for district and state	\$13,718	\$13,718 invoiced no earlier than October 31, 2019
November 2019	Ongoing support, instructional imbedded professional development, data analysis and school oversight	Report on progress on district progress monitoring indicators	\$13,718	\$13,718 invoiced no earlier than November 30, 2019
December 2019	Ongoing support, instructional imbedded professional development, data analysis and school oversight	Mid-year data analysis on student academic performance, attendance, discipline, staffing, parent and community engagement,	\$13,718	\$13,718 invoiced no earlier than December 31, 2019
January 2020	Ongoing support, instructional imbedded professional development, data analysis and school oversight. Review of implemented practices with adjustments for second semester	Quarter 2 State progress monitor data, report on first semester implementation of restorative practices, standards mastery data management, and instructional feedback protocol	\$13,718	\$13,718 invoiced no earlier than January 31, 2020

February 2020	Ongoing support, instructional imbedded professional development, data analysis and school oversight	State required reporting and identification of shifts for second semester	\$13,718	\$13,718 invoiced no earlier than February 29, 2020
March 2020	Ongoing support, instructional imbedded professional development, data analysis and school oversight	State required reporting and report based on monitoring of essential indicators of performance	\$13,718	\$13,718 invoiced no earlier than March 31, 2020
April 2020	Ongoing support, instructional imbedded professional development, data analysis and school oversight	Quarter 3 state progress monitoring data	\$13,718	\$13,718 invoiced no earlier than April 30, 2020
May 2020	Ongoing support, instructional imbedded professional development, data analysis and school oversight	State required reporting and review of state and district data for end of the year analysis	\$13,718	\$13,718 invoiced no earlier than May 31, 2020
June 2020	End of the year review of all programs and systems	Quarter 4 state progress monitoring data and of school year reports. Final school year report	\$13,718	\$13,718 invoiced no earlier than June 30, 2020
August 2020	Performance Payment	School earns a C or higher for the 2019-2020 school year	\$89,100	\$89,100 Invoiced upon the state release of school grades*
TOTAL			\$270,000	\$270,000

\*The potential final payment to Contractor of \$89,100 is subject to the District's allowance of Contractor to fully implement its turnaround plan for the school. Contractor is obligated, and understands and agrees, that it must send written notice to the District if the Contractor is unable to implement its turnaround plan based on the actions or inactions of the District. The Contractor shall provide the District ten (10) business days to cure Contractor's claim. If the District receives notice from the Contractor and fails to timely cure the Contractor's claim, then regardless of the School's grade for school year 2019-2020 the District shall remit the final payment to the Contractor the amount of \$89,100.

EXHIBIT C – MEA/MESP MOU



**THE SCHOOL BOARD OF MARION COUNTY, FLORIDA,  
MARION EDUCATION ASSOCIATION,  
AND MARION ESSENTIAL SUPPORT PERSONNEL MEMORANDUM OF  
UNDERSTANDING FOR SCHOOLS WITH A SCHOOL GRADE OF "D" OR "F"  
TEACHER PLACEMENT AND SELECTION**

The Marion Education Association ("MEA"), Marion Essential Support Personnel ("MESP"), and The School Board of Marion County, Florida ("School Board") agree to the following:

**WHEREAS**, MEA and MESP are certified bargaining agents for School Board; and,

**WHEREAS**, the School Board is the employer and the party to the Collective Bargaining Agreements ("CBAs") with MEA and MESP; and

**WHEREAS**, the parties recognize that the Marion County Public Schools ("District") must abide by the Differentiated Accountability State System of School Improvement outlined in House Bill 7069 (2017) and Section 1008.33, Fla. Stats. (2018); and

**WHEREAS**, the parties acknowledge that schools identified by the Differentiated Accountability State System of School Improvement as needing support must abide by the outlined assurances set forth by the Florida Department of Education; and

**WHEREAS**, the parties have agreed to develop language regarding the recruitment, selection, placement, and expectations for instructional staff in schools designated.

**NOW, THEREFORE**, the parties agree as follows:

1. **Instructional Employee Effectiveness**: Intensive effort will be made to find staff that meets the demonstrated mastery to ensure appropriate staffing levels are met in the schools. In D or F graded schools, eligible instructional employees should demonstrate a raw State VAM or Student Achievement, 3-year aggregate rating, higher than Needs Improvement and possess professional in-field teaching certification to be retained or hired as outlined in Section 8. Other instructional staff, including but not limited to ESE and ESOL, that generate a VAM score and are measured by that metric will be included as a core instructional employee.
2. **Extended Time**: All instructional and non-instructional staff at TOP Schools will work the additional instructional minutes required by the Florida Department of Education. The additional minutes will be paid at the teachers' and non-instructional staff members' daily rates of pay.
3. **Professional Development/Planning Period**: The instructional staff at TOP Schools will receive individual preparation and planning time as outlined in the MEA Collective Bargaining Agreement. Non- core instructional staff will participate in school directed, job-embedded planning or professional development unless the subject matter being addressed in the session is solely related to a specific academic content unrelated to their scope of work as determined in advance by the school principal or his/her designee. Additional professional development and support will be delivered at TOP Schools to include, but not limited to: assisted planning periods, data disaggregation, and job-embedded training.

4. **Instructional Personnel Providing School-wide Support:** To ensure that the instructional employees develop a high degree of comfort when working with the instructional personnel providing school-wide support, the parties acknowledge that these invaluable resource persons are not administrative or supervisory, but rather act as partners and mentors in furthering the goal of improving academic results. Such personnel assigned to the school will be eligible for the same extended time pay as core instructional employees. Every effort will be made to avoid pulling these personnel to act as substitutes and take them from their primary role in supporting instruction.
5. **Recruitment Supplement:** The District desires to recruit the very best instructional employees at schools needing their expertise. A monetary incentive (bonus) to attract highly effective and effective instructional personnel will be determined annually by the District and will be offered to all qualifying members of the bargaining unit who transfer into the TOP Schools (schools implementing a Turnaround Option Plan). To qualify for the Recruitment financial incentives, instructional personnel must have a 3-year aggregate State Value Added Model (VAM) 2017-2018 rating of Highly Effective (HE) or Effective (E) or if an instructional employee does not have State VAM rating, the 3-year aggregate Marion County Public Schools 2017-2018 Student Achievement Score of Highly Effective (HE) or Effective (E), as reported on the Summative Evaluation form will be used as the qualifying criteria. If an instructional employee is new to Marion County Public Schools, the person must have a qualifying 3-year aggregate State Value Added Model (VAM) 2017-2018 rating to qualify for the recruitment supplement.

The only exception to using the above criteria is for instructional employees hired, transferred, or retained at a TOP School (a school implementing a Turnaround Option Plan) who do not have a 2017-2018 rating. Instructional employees, who do not have a 2017-2018 rating, will be qualified based on the above criteria using the 2018-2019 ratings once received.

Instructional employees hired at or transferred to a TOP School after the release of the 2018-2019 3-year State VAM Rating will be qualified using the above criteria based on the 2018-2019 3-year aggregated State VAM rating. However, in the absence of State VAM rating, the 2017-2018 MCPS Student Achievement will continue to be utilized.

The recruitment incentive will be prorated for qualifying instructional personnel who work less than their full contract.

See Appendix A.

6. **Retention Supplement:** The District desires to reduce turnover while retaining the very best instructional employees at schools needing their expertise. In an effort to retain highly effective and effective instructional personnel at the TOP Schools (schools implementing a Turnaround Option Plan), a monetary incentive (bonus) will be determined annually by the District and will be offered to all qualifying members of the bargaining unit, who are retained and meet the criteria at a TOP School. The District will offer a Retention financial incentive to instructional personnel with a 3-year aggregate State Value Added Model (VAM) 2017-2018 score of Highly Effective (HE) or Effective (E) or a 3-year aggregate Marion County Public Schools 2017-2018 Student Achievement Score of Highly Effective (HE) or Effective (E), as reported on the Summative Evaluation form.

The only exception to using the above criteria is for instructional employees hired, transferred, or retained at a TOP School (a school implementing a Turnaround Option Plan) who do not have a 2017-2018 rating. Instructional employees, who do not have a 2017-2018 rating, will be qualified based on the above criteria using the 2018-2019 ratings once received.

The retention incentive will be prorated for qualifying instructional personnel who work less than their full contract.

See Appendix A.

**7. Change of Status:**

- In the summer of 2019, the FL Department of Education will release the list of schools required to implement a Turnaround Option Plan during the 2019-2020 school year.
- If a school is no longer a TOP School in 2019-2020, qualifying Instructional Staff recruited/retained based on the previous year's TOP status, will still receive the monetary incentive for the 2019-2020 school year.
- If a qualifying instructional employee is involuntarily transferred from a TOP School, the monetary incentive (bonus) will be awarded (excluding transfers for disciplinary reasons).

**8. Movement of Teachers:**

The district must ensure the following at schools with a School Grade of a D or F. Movement of teachers will occur abiding by the respective assurances utilizing the 2017-2018 data until the release date of the 2018-2019 3-year aggregated state VAM rating.

- Percentage of instructional personnel with a rating of Unsatisfactory or Needs Improvement based on the most recent 3-year aggregated state VAM is less than the district average.
- Percentage of instructional personnel who do not have a state VAM rating and with less than an Effective Student Achievement rating must be less than the district average.
- Percentage of temporarily certified or out-of-field instructional personnel should not be higher than the district averages. A school that has instructional vacancies IO days prior to the first student day and anytime thereafter, is considered in a hiring hardship. Any D or F school experiencing a hiring hardship may exceed up to 5% beyond the district average of temporarily certified or out-of-field instructional personnel.

An exception to using the district averages before movement of teachers would be any school implementing one of the three Turnaround Options: Reassignment/Closure, Charter, or External Operator/Outside Entity.

Collective bargaining agreements and statutory requirements will govern the decision to move a teacher or non-instructional employee.

See Appendix A.

THE SCHOOL BOARD OF MARION  
COUNTY, FLORIDA

By: Kelly King  
Kelly King, Board Chair

Date: APR 23 2019

By: Heidi Maier  
Heidi Maier, Ed.D., Superintendent

Date: APR 23 2019

MARION EDUCATION ASSOCIATION

By: Mark Avery  
Mark Avery, President

Date: 4/26/19

MARION ESSENTIAL SUPPORT PERSONNEL

By: Donnie Prophet  
Donnie "Donnie" Prophet, President

Date: 4/30/19



# Monetary Incentive (Bonus) to Recruit and Retain Teachers 2019-2020 School Year

^Appendix A  
(See full details  
outlined in MOU  
document.)

**2018-2019 TOP Schools:** Belleview Santos, Evergreen, Fessenden, Greenway, Reddick-Collier, and Oakcrest Elementary Schools  
Qualifying Instructional Staff recruited or retained at the above TOP Schools prior to the release of 2018-2019 school grades will be \* "grandfathered" in.  
\* "grandfathered in" (If a school is no longer a TOP School in 2019-2020, the Instructional Staff recruited/retained based on the previous year's TOP Status will still receive the monetary incentive.)

**2019-2020 TOP Schools:** In the summer 2019, the FL Department of Education will release the list of Schools that are required to implement a TOP.

**Please note:**

- The recruitment/retention incentive (bonus) will be prorated for qualifying instructional personnel who work less than their full contract.
- Instructional employees hired at or transferred to a TOP School after the release of the 2018-2019 3-year aggregated State VAM Rating will be qualified using the 2018-2019 3-year aggregated State VAM rating. However, in the absence of a State VAM rating, the 2017-2018 MCPS Student Achievement will continue to be utilized.
- \*\*The only exception to using the criteria below is for instructional employees hired, transferred, or retained at a TOP School who do not have a 2017-2018 rating. Instructional employees who do not have a 2017-2018 rating, will be qualified based on the criteria below using the 2018-2019 ratings once received.

**April 2019 UNTIL 2018-2019 State VAM Ratings Released**

## Recruitment & Retention

Transferred to or Newly  
Hired at a TOP School

Remained at a TOP  
School

<b>\$6000.00</b>	Highly Effective State VAM (Value Added Model) (**2017-2018 3-Year Aggregate Rating)
	~ or in the absence of State VAM ~
	Highly Effective Student Achievement (**MCPS 2017-2018 3-Year Aggregate Rating)

<b>\$3000.00</b>	Effective State VAM (Value Added Model) (**2017-2018 3-Year Aggregate Rating)
	~ or in the absence of State VAM ~
	Effective Student Achievement (MCPS 2017-2018 3-Year Aggregate Rating)

<b>\$1000.00</b>	*Certified Self-Contained ESE Teacher
	If the instructional person qualifies for one of the criteria listed above, this monetary incentive will be in addition.

**AFTER 2018-2019 State VAM Ratings Released**

## Recruitment & Retention

Transferred to or Newly  
Hired at a TOP School

Remained at a TOP  
School

<b>\$6000.00</b>	Highly Effective State VAM (Value Added Model) (2018-2019 3-Year Aggregate Rating)
	~ or in the absence of State VAM ~
	Highly Effective Student Achievement (MCPS 2017-2018 3-Year Aggregate Rating)

<b>\$3000.00</b>	Effective State VAM (Value Added Model) (2018-2019 3-Year Aggregate Rating)
	~ or in the absence of State VAM ~
	Effective Student Achievement (MCPS 2017-2018 3-Year Aggregate Rating)

<b>\$1000.00</b>	*Certified Self-Contained ESE Teacher
	If the instructional person qualifies for one of the criteria listed above, this monetary incentive will be in addition.

**EXHIBIT D - COMPOSITE FEDERAL FORMS  
FEDERAL REGULATORY COMPLIANCE STATEMENT**

The purpose of this document is to assure compliance by the Contractor (*defined as any individual or company who agrees to provide materials or services at a specified price*) to those certain clauses, provisions and requirements as described by applicable Federal Regulations, which apply to any resulting agreement between the District and the Contractor. By signature, the individual executing this statement attests that he/she possesses authority to obligate the contracting firm and agrees to comply with all clauses, provisions, and requirements as described below throughout the term of this agreement.

1. The Contractor agrees to allow reasonable access by District, the Federal granting agency, the Comptroller General of the United States or any of their duly authorized representatives to the Contractor's books, documents, papers and records which are directly pertinent to the contract for the purpose of making audit, examination, excerpts and transcriptions.
2. The Contractor agrees to maintain all records related to this agreement for a period of three years after the final payment for this agreement and after all other matters are closed.
3. The Contractor affirms that it is equal opportunity and affirmative action employer and will comply with all applicable federal, state and local laws and regulations including, but not limited to: Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans with Disabilities Act; 41 CFR Part 60 and any additions or amendments thereto.
4. The Contractor agrees to a provision for non-appropriations, whereby this agreement will terminate if sufficient funds are not appropriated in any given fiscal year to allow District to sustain the cost (if applicable).
5. The Contractor agrees to properly complete and submit to District a federal debarment certification form for each renewal year of the Contract, if renewals apply.
6. The Contractor agrees to properly complete and submit to District a non-collusion affidavit.
7. The Contractor agrees to properly complete and submit to District a federal drug free workplace certification form.
8. The Contractor agrees the District may terminate the contract at any time for any reason. If terminated for cause, the Contractor agrees the District may seek remedies for damages, if applicable.
9. The Contractor agrees to comply with all applicable environmental standards, orders or requirements.

CONTRACTOR:



PRINT NAME OF AUTHORIZED REPRESENTATIVE: Jayne P. Ellspermann

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_


TITLE: Manager

## DRUG FREE WORKPLACE CERTIFICATION

I hereby swear or affirm that Contractor has established a drug-free workplace program by completing the following requirements:

- 1) Published a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

**As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements. I understand that false certification of a drug-free workplace is a violation of Section 287.087, Fla. Stats. (2019).**

  
\_\_\_\_\_  
CONTRACTOR'S SIGNATURE/DATE

Jayne P. Ellspermann, Manager

NAME/TITLE

Name of Company: Jayne Ellspermann, LLC

## INSTRUCTIONS FOR COMPLETION OF NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded utilizing federal funds.
2. This Non-Collusion Affidavit shall be executed by the member, officer, or employee of the offering firm who makes the final decision on prices and the amount(s) quoted in the proposal.
3. Proposal rigging and other efforts to restrain competition and the making of false sworn statements in connection with the submission of offers are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit shall examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the respondent with responsibilities for the preparation, approval or submission of the offer.
4. In the case of an offer submitted by a joint venture, each party to the venture must be identified in the proposal documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term "complementary offer" as used in the Affidavit has the meaning commonly associated with that term in the solicitation process, and includes the knowing submission of offers higher than the offer of another firm, an intentionally high or noncompetitive offer, and any other form of an offer submitted for the purpose of giving a false appearance of competition.
6. Failure to file a completed Affidavit in compliance with these instructions will result in disqualification of the offer.

**NON-COLLUSION AFFIDAVIT**

**State of FLORIDA**

**County of MARION**

I state that I am the Manager of Jayne Ellspermann, LLC, and I am authorized to execute this affidavit on behalf of my firm, its owners, directors, and officers. I am the person responsible in my firm for the price(s), guarantees and the total financial commitment represented in the firm's offer.

I hereby attest that:

- (1) The price(s) and amount(s) in the offer have been arrived at independently and without consultation, communication or agreement with any other contractor, respondent, or potential respondent.
- (2) Neither the price(s) nor the amount(s) of the offer, and neither the approximate price(s) nor approximate amount(s) of the offer, have been disclosed to any other firm or person who is a respondent or potential respondent, nor were they disclosed before opening of offers.
- (3) The offer from my firm is made in good faith and no attempt has been made to induce any firm or person to refrain from submitting an offer, or to submit an offer higher than our offer, or to submit any intentionally high or noncompetitive offer or other form of complementary offer.
- (4) Jayne Ellspermann, LLC, its affiliates, subsidiaries, officers, directors, employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding, proposing or offering on any public contract, except as follows:

NONE

I attest that I, Jayne P. Ellspermann, understands and acknowledges that the above representations are material and important, and will be relied on by The School Board of Marion County, Florida, in awarding the contract for which this offer is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from The School Board of Marion County, Florida, of the true facts relating to submission of offers for this contract.

Jayne Ellspermann, LLC

  
Jayne P. Ellspermann, Manager

8/12/2019  
(Date)



**EXHIBIT E**  
**Insurance Requirements**

A. **REQUIRED INSURANCE.** Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall (and shall also require of any of its subcontractors), at their sole expense, procure, maintain and keep in force the amounts and types of insurance conforming to the minimum requirements outlined herein. Except as may be otherwise expressly specified in this Exhibit, the insurance will commence at or before the execution of this Agreement by the District and must be maintained in force throughout the term of this Agreement.

1. **Workers' Compensation/Employers Liability:** The Workers' Compensation and Employers' Liability insurance provided by the Contractor shall conform to the requirements outlined herein.

a. The Contractor's insurance shall cover the Contractor (and to the extent its Subcontractors and Sub-subcontractors are not otherwise insured, its Subcontractors and Sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida (herein, the "State") by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable federal or state law.

b. The policy must be endorsed to waive the insurer's right to subrogate against the District, and its members, officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver of Our Right to Recover from Others Endorsement (Advisory Form WC 00 03 13) with the District, and its members, officials, officers and employees scheduled thereon.

c. Subject to the restrictions of coverage found in the standard Workers' Compensation policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act or any other coverage customarily insured under Part One of the standard Workers' Compensation policy. The amount of coverage for those coverage's customarily insured under Part Two of the standard Workers' Compensation policy (inclusive of any amounts provided by an umbrella or excess policy) shall not be less than:

\$1,000,000	Each Accident
\$1,000,000	Disease - Each Employee
\$1,000,000	Disease - Policy Limit

d. The Contractors may be relieved of providing Workers' Compensation coverage provided an exemption form is submitted from the State Division of Workers Compensation stating the Contractor is exempt from the insurance requirement under F.S. 440.

2. **Commercial General Liability.** The Commercial General Liability insurance provided by the Contractor shall conform to the requirements hereinafter outlined:

a. The Contractor's insurance shall cover those sources of liability which would be covered by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State by the Insurance Services Office (ISO) without any restrictive endorsements other than those which are required by the State, or those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements) and those described below which would apply to the Services contemplated under this Agreement.

(1) The coverage **may not** include restrictive endorsements which exclude coverage for liability arising out of: Sexual molestation, Sexual abuse or Sexual misconduct.

(2) The coverage may include restrictive endorsements which exclude coverage for liability arising out of: Mold, fungus, or bacteria Terrorism Silica, asbestos or lead.

b. The limits to be maintained by the Contractor (inclusive of any amounts provided by an umbrella or excess policy) shall not be less than:

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

c. The Contractor shall include the District and the District's members, officials, officers and employees as "additional insured's" on the Commercial General Liability coverage. The coverage afforded such additional insured's shall be no more restrictive than that which would be afforded by adding the District and the District's members, officials, officers and employees as additional insured's on the latest edition of the Additional Insured – Owner's, Lessees or Contractors - Scheduled Person or Organization endorsement (ISO Form CG 20 10) filed for use in the State by the Insurance Services Office.

d. Except with respect to coverage for property damage liability, or as otherwise specifically authorized in this Agreement, the general liability coverage shall apply on a first dollar basis without application of any deductible or self-insured retention. The coverage for property damage liability shall be subject to a maximum deductible of \$1,500 per occurrence. The Contractor shall pay on behalf of the District or the District's member, official, officer or employee any such deductible or self-insured retention applicable to a claim against the District or the District's member, official, officer or employee for which the District or the District's member, official, officer or employee is insured as an additional insured.

3. **Business Auto Liability.** The automobile liability insurance provided by the Contractor shall conform to the requirements hereinafter outlined:

a. The Contractor's insurance shall cover the Contractor for those sources of liability which would be covered by Section II of the latest occurrence edition of the standard Business Auto Coverage Form (ISO Form CA 00 01) as filed for use in the State by ISO without any restrictive endorsements other than those which are required by the

State, or those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements). Coverage shall include all owned, non-owned and hired autos used in connection with this Agreement.

b. The District and the District's members, officials, officers and employees shall be included as "additional insured's" in a manner no more restrictive than that which would be afforded by designating the District and the District's members, officials, officers and employees as additional insured's on the latest edition of the ISO Designated Insured (ISO Form CA 20 48) endorsement.

c. The limits to be maintained by the Contractor (inclusive of any amounts provided by an umbrella or excess policy) shall not be less than:

\$1,000,000 Each Occurrence - Bodily Injury and Property Damage Combined

4. **Professional Liability.** The professional liability insurance provided by the Contractor shall conform to the requirements hereinafter set forth:

a. The professional liability insurance shall be on a form acceptable to the District and shall apply to those claims which arise out of Services performed by or on behalf of the Contractor pursuant to this Agreement which are first reported to the Contractor within four years after the expiration or termination of this Agreement.

b. If the insurance maintained by the Contractor also applies to services other than Services under this Agreement, the limits of insurance maintained by the Contractor shall not be less than \$1,000,000 per claim/annual aggregate. If the insurance maintained by the Contractor applies exclusively to the Services under this Agreement, the limits of insurance maintained by the Contractor shall not be less than \$1,000,000 per claim/annual aggregate.

c. Except as otherwise specifically authorized in this Agreement, the insurance may be subject to a deductible not to exceed \$15,000 per claim.

d. The Contractor shall maintain the professional liability insurance until the end of the term of this Agreement. Through the use of an extended discovery period or otherwise, the insurance shall apply to those claims which arise out of professional services, before the expiration or termination of this Agreement which are reported to the Contractor or the insurer within four years after the expiration or termination of this Agreement.

B. **EVIDENCE OF INSURANCE.** Except as may be otherwise expressly specified in this Exhibit, the insurance shall commence before the execution of this Agreement by the District and will be maintained in force throughout the term of this Agreement. The Contractor shall provide evidence of such insurance in the following manner:

1. As evidence of compliance with the required Workers' Compensation and Employer's Liability, Commercial General Liability, Business Auto Liability, and Professional Liability, the Contractor shall furnish the District with a fully completed satisfactory Certificate of Insurance such as a standard ACORD Certificate of Liability Insurance (ACORD Form 25) or other evidence satisfactory to the District, signed by an authorized representative of the insurer(s) providing the coverage. The Certificate of Insurance, or other evidence, shall verify that Workers'

Compensation/Employer's Liability contains a waiver of subrogation in favor of the District, identify this Agreement, and provide that the District shall be given no less than thirty (30) days' written notice before cancellation.

2. As evidence of the required Additional Insured status for the District on the Commercial General Liability insurance, the Contractor shall furnish the District with:

a. A fully completed satisfactory Certificate of Insurance, and a copy of the actual additional insured endorsement as issued on the policy, signed by an authorized representative of the insurer(s) verifying inclusion of the District and the District's members, officials, officers and employees as Additional Insured's in the Commercial General Liability coverage.

b. An original copy of the policy (or policies).

3. Until such time as the insurance is no longer required to be maintained by the Contractor as outlined in this Agreement, the Contractor shall provide the District with renewal or replacement evidence of the insurance in the manner heretofore described no less than thirty (30) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

4. Notwithstanding the prior submission of a Certificate of Insurance, copy of endorsement, or other evidence initially acceptable to the District, if requested by District, the Contractor shall, within thirty (30) days after receipt of a written request from the District, provide the District with a certified copy or certified copies of the policy or policies providing the coverage required by this Section. The Contractor may redact or omit those provisions of the policy or policies which are not relevant to the insurance required under this Agreement.

#### **C. INSURERS QUALIFICATIONS/REQUIREMENTS:**

1. Insurers providing the insurance required by this Agreement for the Contractor must either be:

a. Authorized by a subsisting certificate of authority issued by the State to transact insurance in the State, or

b. An eligible surplus lines insurer under State Statutes. (Except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act).

2. In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A. M. Best Company.

3. If, during the period when an insurer is providing the insurance required by this Agreement, an insurer fails to comply with the foregoing minimum requirements, as soon as the Contractor has knowledge of any such failure; the Contractor shall immediately notify the District and immediately replace the insurance provided by the insurer with an insurer meeting these requirements. Until the Contractor has replaced the unacceptable insurer with an insurer acceptable to the District, the Contractor will be in default of this Agreement.

D. **Primary and Non-Contributory.** The insurance provided by the Contractor pursuant to this Agreement will apply on a primary basis to, and will not require contribution from, any other insurance or self-insurance maintained by the District or the District's member, official, officer or employee.

E. **Additional Remedy.** Compliance with the insurance requirements of this Agreement will not limit the liability of the Contractor or its Subcontractors or Sub-subcontractors, employees or agents to the District or others. Any remedy provided to the District or the District's members, officials, officers, or employees by the insurance will be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

F. **District Approval:** Neither approval by the District nor failure to disapprove the insurance furnished by the Contractor will relieve the Contractor of the Contractor's full responsibility to provide the insurance as required by this Agreement.