

Main Contract

SERVICE AGREEMENT

This Service Agreement (the "Agreement") is entered into this 24th day of May, 2013, by and between ACBMS, LLC, a Texas limited liability Company with offices located at 8500 N. Stemmons Fwy, Suite 6042, Dallas, Texas 75247 hereinafter called "Contractor," and Aubrey Independent School District, located at 415 Tisdell, Aubrey, Texas 76227 hereinafter called "Aubrey ISD."

RECITALS

Aubrey ISD is the owner and operator of The following Aubrey ISD facilities:

1. Aubrey HS
2. Aubrey MS
3. Brockett Elementary
4. Monaco Elementary
5. Early Bird Learning Center/Administration Office
6. Board House

For convenience, from time to time these facilities will be referred to as "the premises."

Contractor is engaged in the business of furnishing building management and maintenance services and associated property services. Aubrey ISD and the Contractor desire to enter into an agreement whereby Aubrey ISD will employ the Contractor to provide Custodial Services on the premises under the terms and conditions as set forth in Section 5.3.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Contract Documents

The Contract Documents shall include: (1) Aubrey Independent School District Request for Proposals: Direct Custodial Services, issued in the Spring of 2013 ("Request for Proposals"); (2) Contractor's Proposal; and (3) the Service Agreement. The terms of the Request for Proposals are incorporated into this Service Agreement, as if fully set forth herein.

2. Contract Term.

2.1 Aubrey ISD hereby hires Contractor and Contractor agrees to provide custodial services for Aubrey ISD in accordance with the terms and conditions set forth below.

2.2 This service contract between Contractor and Aubrey ISD will start effective as of June 1st, 2013 and shall continue until May 31st, 2016 unless terminated by either party as provided for in Section 8 of this Agreement. Aubrey ISD reserved the right to renew this contract on an annual basis for an additional two (2) years in twelve (12) month increments. At the time of renewal the pricing on this contract may be increased, decreased or remain the same. If increased, the increased must be justifiable and the amount may not exceed 5% over the previous period.

3. Nature and Quality of Services to Be Performed.

3.1 Contractor agrees to perform services on the premises in accordance with the section 5.3 of this agreement in a good and workmanlike manner and in accordance with generally accepted standards in the building management and maintenance service industry.

3.2 Notification of deficiencies in the performance of the Agreement may be made either of two ways:

a. In writing (email or fax) to the Contractor, stating the exact nature of the deficiency; or

b. by telephone call to the Contractor.

3.3 In any event, Contractor shall acknowledge and document the alleged deficiency. An investigation shall be conducted by the Contractor and Aubrey ISD within a reasonable amount of time. After the investigation, if it is determined that Contractor is at fault, the deficiency shall be corrected immediately. If the deficiency is caused by factors other than the Contractor's error, Aubrey ISD may, at extra charge, hire Contractor to correct the deficiency.

4. Furnished by Contractor.

4.1 Contractor will furnish adequate staffing as listed in Exhibit A during the day and afternoon to perform custodial services, consumable restroom products, trash liners, cleaning chemicals, VCT floor, wood and carpet maintenance products to perform custodial services specified duties under Aubrey ISD bid Package.

4.2 Contractor will also provide custodians for special events at Aubrey ISD.

4.3 Contractor represents and warrants that it will use generally accepted employment standards in the hiring and retention of contract workers to be provided under this Agreement including background checks and fingerprint prints.

4.4 All employees of Contractor performing services for Aubrey ISD must undergo a criminal background check as well as fingerprint checks according to state requirements prior to beginning work at the District. No employee with a felony conviction or a conviction of sex crime, crime of moral turpitude, or any crime against a child may perform services for the District. Records of backgrounds must be made available to the District at any time.

4.5 The number of Custodians utilized pursuant to this Agreement may be modified from time to time as set forth in this Agreement

5. Relationship of the Parties.

5.1 The parties intend that Contractor, in performing Services specified in this Agreement, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Contractor shall be free to contract for similar services to be performed for other companies while Contractor is under contract with Aubrey ISD. Contractor is not to be considered an agent or employee Aubrey ISD and is not entitled to participate in any pension

plans, bonus, stock or other benefits Aubrey ISD provides its employees. Nothing contained in this Agreement shall create either (1) the relationship of a joint venture, partnership or association between Contractor and Aubrey ISD, (2) the relationship of employee/employer between the employees of Contractor and Aubrey ISD, or (3) the relationship of principal and agent between Aubrey ISD and Contractor.

5.2 In no event may Contractor bind Aubrey ISD to any customer relationship or vary the terms of any agreement between Aubrey ISD and any other party. Contractor is acting and occupying the status of independent contractor only. Neither Contractor nor any person employed or associated with Contractor shall have the authority to make representations on behalf of Aubrey ISD nor may in any way bind Aubrey ISD in any manner except as specifically authorized Aubrey ISD in writing or by this Agreement. Aubrey ISD is not responsible for the acts or omissions of Contractor or its employees.

5.3 Contractor represents and warrants to Aubrey ISD that it is not subject to any contract, agreement, judgment, order or decree of any kind, or any restrictive agreement of any character that restricts their ability to perform their obligations under this Agreement or that would be breached by them upon their performance of its duties pursuant to this Agreement. The provisions of this Section shall survive the termination of this Agreement. A breach of this section is considered a material breach.

6. Frequency of Service

6.1 Contractor will provide custodial services in a reliable manner five (5) days per week for all Aubrey ISD facilities (as mentioned in Recital Section page I of this agreement).

6.2 The Custodial service will be available Monday, Tuesday, Wednesday, Thursday, and Friday. The work day will start at 7:30 a.m. and be completed by 11:00 p.m.

6.3 Custodial services will be provided for any school events.

7. Supervision.

7.1 In order to ensure the highest quality services, the Contractor agrees to have a FT onsite Project Manager and perform regular and scheduled inspections of the premises, noting any deficiencies to be corrected, as well as pointing out the areas of superior service to the regular staff. In addition, Contractor's upper management personnel will be available for inspection and follow-up if the situation warrants such attention.

8. Disputes.

8.1 In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party in a final adjudication may be entitled to reasonable attorneys fees and costs, in accordance with Texas law.

9. Termination.

9.1 This Agreement may be terminated in its entirety by Aubrey ISD or the Contractor at any

time by giving written notice of the intent to do so at least sixty (60) days prior to the desired date of termination. Notwithstanding the foregoing, in the event of a material breach as provided for in the Agreement, this Agreement may be terminated following 30-days notice and an opportunity to cure the breach.

9.2 In no event will any notice of termination give rise to or result in any reduction of services by Contractor, or in any manner reduce or diminish the agreed upon amount due to Contractor for any past services performed under the terms of this Agreement.

9.3 The District, being a governmental entity that operates on an annual budget funded by taxpayer dollars, may terminate this Agreement during the initial Term and/or any extension of the initial Term if the District's Board of Trustees in a majority vote does not appropriate funds for the continuance of services by the Contractor.

10. Monthly Fee, Terms, and Conditions

10.1 The monthly service fee for custodial services is as follows:

- a) Month 1-12 Thirty three thousand nine hundred dollars (\$33,900.00)
- b) Month 24-36 Thirty Four thousand one hundred and Twenty Five dollars (\$34,125.00)
- c) Month 37-48 Thirty Four thousand Five hundred dollars (\$34,500.00)
- d) Fee for last 24 months of this agreement will be negotiated by both parties

10.2 Aubrey ISD agrees to pay Contractor a monthly fee as shown in Section 9.1 a, b and c.

10.3 Payment shall be due in accordance with the Texas Prompt Payment Act.

10.4 Late payments shall accrue interest in accordance with the Texas Prompt Payment Act.

10.5 Special billing instructions: see Section 14 for payment address.

11. Indemnification.

11.1 Contractor shall protect, defend, indemnify and hold harmless Aubrey ISD, its directors, officers, agents, servants and employees from any and all liabilities, damages, claims, threatened actions, suits, judgments, costs and expenses (including reasonable attorney's fees and court costs) directly or indirectly incurred by Aubrey ISD, resulting directly or indirectly from the actual or alleged negligence, acts, omissions, or errors of Contractor or resulting from Contractor's actual or alleged breach of this Agreement, including but not limited to, liabilities, damages, claims, suits, judgments, costs and expenses, including reasonable attorney's fees, relating to actual or alleged negligent hiring or any similar claims. This indemnification shall include, but not be limited to, claims for actual or alleged violations of local, federal or state law, defamation, invasion of privacy, personal injury, emotional distress, malicious prosecution, abuse of process and interference with business relations.

12. . Liability Insurance

12.1 Throughout the term of the contract the Contractor shall carry Commercial General Liability

coverage of \$1,000,000.00 combined single limit policy aggregate. The District shall be named as an additional insured on the policy. The certificate of Insurance will be submitted with the proposal. In the event the Contractor fails to maintain and keep in force the insurance coverage required, the District shall have the right to terminate any contract resulting from this RFP.

12.2 If Contractor's employees will be required to drive from one District campus and/or facility to another, the Contractor shall carry Business Automobile Liability with a combined single limit of at least \$1,000,000.00, with bodily injury coverage of at least \$500,00.00 each person and \$1,000,000.00 aggregate, and property damage coverage of at least \$500,000.00 per accident.

12.3 The District shall not obtain or maintain any workers' compensation or other type of insurance for or on behalf of Contractor or Contractor's employees. Contractor shall comply with all laws, rules and regulations applicable to workers' compensation and shall provide Contractor with a certificate of any workers' compensation insurance that is required by law, and certificates of such other types of insurance as the District may reasonably request, in such forms and in such amount as shall reasonable be acceptable to the District.

13. Assignment.

13.1 Contractor may not assign its interest in or delegate their duties under this Agreement. This Agreement is for the services of Contractor only, and the Services to be rendered by it under this Agreement must be rendered by Contractor alone. This Agreement shall be binding upon and inure to the benefit of and be enforceable by Aubrey ISD and its successors and assigns. Without limiting the foregoing and notwithstanding anything else in this Agreement to the contrary, Aubrey ISD may assign this Agreement to, and all rights hereunder shall inure to the benefit of, any subsidiary of Aubrey ISD or any person, firm or corporation resulting from the reorganization of Aubrey ISD or succeeding to the business or assets of Aubrey ISD. A breach of this section shall be considered a material breach.

14. Severability.

14.1 In the case that any provision of this Agreement is determined to be invalid, illegal, or unenforceable as written, both the Owner and the Contractor intend and desire that such provision be enforced to the fullest extent allowed by law, and that the remainder of this Agreement shall not be affected in any way.

15. Modification.

15.1 This agreement is the final and complete agreement of the Owner and the Contractor and supersedes and replaces all written and oral agreements heretofore made or existing by and between them. This agreement may not be modified in any respect except upon mutual agreement of the Owner and the Contractor in writing signed by each of them.

16. Notice.

16.1 Any notices required or permitted hereunder shall be in writing and shall be deemed to have been given when personally delivered or when mailed, certified or registered mail, or sent by reputable overnight courier, postage prepaid, to the addresses indicated in this Agreement.

Aubrey ISD Custodial Service Staffing Plan Exhibit "A"

Facility	NO. OF FTE MORNING	NO. OF PTE MORNING	NO. OF FTE AFTERNOON	NO. OF PTE AFTERNOON	Total Employee per Location
Aubrey H.S.	1	1	3	1	6
Aubrey M. S.	1	0	2	1	4
Brockett Elementary	1	0	2	0	3
Monaco Elementary	1	0	2	1	4
EBCL/Administration	0	1	1	0	2
Board House	0	0	1	0	1

Summer Staffing

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16.2 Send bills and notices to:


Aubrey ISD
Attn: Superintendent
Dr. James Monaco
415 Tisdell
Aubrey, Texas 76227

ACBMS, LLC
Attn. Nick Mirza
8500 N. Stemmons Fwy
Suite 6042, MB 119
Dallas, Texas 75247

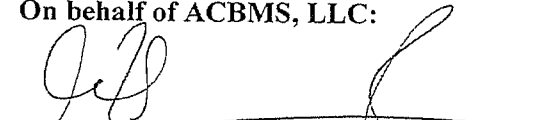
IN WITNESSES WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement on the day and year first written above.

On behalf of Aubrey ISD:

On behalf of ACBMS, LLC:



Signature



Signature

JAMES A. MONACO

Print Name:

NICK MIRZA

Print Name:

Superintendent

Title

President

Title

MAY 31, 2013

Date:

MAY 29th, 2013

Date: