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Frank Edelblut  
Commissioner



Christine M. Brennan  
Deputy Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, NH 03301  
TEL. (603) 271-3495  
FAX (603) 271-1953

January 26, 2022

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Education, Bureau of Instructional Support, to enter into a **sole source** contract with College Board, New York, New York (vendor code 164060), in an amount not to exceed \$100,000.00, to administer Advanced Placement (AP) exams in order to assist income-eligible high school students to participate in the Advanced Placement program with test fee reductions, effective upon Governor and Council approval through June 30, 2023. 100% General Funds.

Funds to support this request are available in the account titled Advanced Placement Fee for FY 22 and FY 23, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council approval, if needed and justified:

	<u>FY 22</u>	<u>FY 23</u>
06-56-56-562010-25320000-073-500583 Grants-Non Federal	\$50,000.00	\$50,000.00

**EXPLANATION**

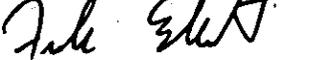
The Department is requesting a **sole source** contract due to the fact that the AP program is administered by the College Board, thus they are the singular provider of AP exams.

The NH state legislature has included funding in the budget to help defray or cover the cost for all students, especially economically disadvantaged students, to have the opportunity to take Advanced Placement tests after they complete the Advanced Placement course in high

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
page 2 of 2

school. By receiving a passing score on these tests, students are able to enter college already having college credit and the ability to take higher level courses in the chosen field of study thus reducing the cost of their college education.

Respectfully submitted,



Frank Edelblut  
Commissioner of Education

FE:mw:emr

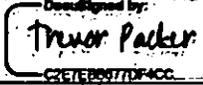
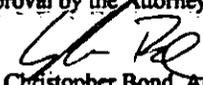
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

<b>1.1 State Agency Name</b> NH Department of Education		<b>1.2 State Agency Address</b> 101 Pleasant Street, Concord, NH 03301	
<b>1.3 Contractor Name</b> College Board		<b>1.4 Contractor Address</b> 250 Vesey Street, New York, NY 10281	
<b>1.5 Contractor Phone Number</b> 212-713-8121	<b>1.6 Account Number</b> See Exhibit C	<b>1.7 Completion Date</b> June 30, 2023	<b>1.8 Price Limitation</b> \$100,000.00
<b>1.9 Contracting Officer for State Agency</b> Melissa White, Administrator		<b>1.10 State Agency Telephone Number</b> 603-271-3855	
<b>1.11 Contractor Signature</b> Digitally signed by:  Date: 12/16/2021 <small>C2E1E8977DF4CC</small>		<b>1.12 Name and Title of Contractor Signatory</b> Trevor Packer Senior Vice President, AP and	
<b>1.13 State Agency Signature</b>  Date: 1/27/2022		<b>1.14 Name and Title of State Agency Signatory</b> Frank Edelblut, Commissioner	
<b>1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</b> By: _____ Director, On: _____			
<b>1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)</b> By:  On: 1/27/2022 Christopher Bond, Attorney			
<b>1.17 Approval by the Governor and Executive Council (if applicable)</b> G&C Item number: _____ G&C Meeting Date: _____			

  
 Contractor Initials  
 Date 12/16/2021

**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**17. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

**EXHIBIT A  
SPECIAL PROVISIONS**

Additional Exhibits D-G

Amendments to the New Hampshire P-37 Agreement:

**DELETE:**

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**REPLACE WITH:**

**23. SEVERABILITY.** The provisions of this Contract shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

**ADD AFTER SECTION 24:**

**25. LIMITATION OF LIABILITY.** To the extent permitted by law, and notwithstanding any other provisions of this contract, the total liability, in the aggregate, of the College Board and its officers, trustees, partners, employees, agents and the College Board's subcontractors and consultants, and any of them, to the State of New Hampshire and anyone claiming by, through or under the State of New Hampshire, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this contract or the work performed by the College Board pursuant to this contract from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty expressed or implied of the College Board or the College Board's officers, trustees, partners, employees, agents, subcontractors or consultants or any of them, shall not exceed the actual amount paid to the College Board under this contract for the specific deliverable subject to the damages claim. In no event shall the College Board be liable to the State, its schools, students or anyone claiming by, through or under the State for any and all claims, losses, costs or damages whatsoever arising out of a school's failure to comply with the obligations set forth in the AP Participation Form, which include, without limitation, complying with the AP Coordinator's Manual. This limitation on liability shall not apply to claims, liabilities, or penalties as outlined in Section 13. Indemnification.

In no event shall either party, their affiliates or their subcontractors be liable for any special, incidental, indirect, consequential, exemplary, or punitive damages (including, but not limited to, any damages for loss of profits or savings, loss of use, business interruption or the like), even if such party has been advised of the possibility of such damages.

**FUNDING.** If the State is using federal funds to pay for all or a portion of the services and deliverables furnished by the College Board under this Contract, the State acknowledges and agrees that the College Board shall not be categorized, by the State, as a "subrecipient" receiving a federal award as defined by OMB Circular Subpart A.210(c) of Circular No. A-133. The College Board shall be defined, by the State, as a "vendor" that provides good and services within normal business operations, provides similar goods or services to other purchasers and operates in a competitive environment. The State acknowledges and agrees that the substance of the relationship with the College Board is that of a vendor not a subrecipient.



**EXHIBIT B  
SCOPE OF SERVICES**

**A. AP Exam Administration**

The Advanced Placement® (AP®) Exams will be furnished by the College Board in May of 2022 ("2022 AP Exam") and in May of 2023 ("2023 AP Exam"). In connection with the College Board's administration of the AP Exams: i) the College Board and the State will implement a direct billing arrangement for AP Exams; ii) the College Board will provide an online participation form ("AP Participation Form") for e-signature to each of State's schools, which authorizes each school to order and administer AP Exams; and iii) upon request of the State, the College Board will provide certain data to the State, as further described below.

**B. Direct Billing Arrangement for AP Exams**

For each AP Exam, except for AP Seminar Exams and AP Research Exams, taken by students who attend State's public and non-public schools, and who qualify for the College Board AP Exam fee reduction ("Fee-Reduced Exams"), as indicated by the applicable school's AP coordinator, the following will occur:

- i. The College Board will provide a \$34.00 (thirty-four dollars) fee reduction per exam;
- ii. The applicable school will forego its \$9.00 (nine dollars) rebate per exam;
- iii. The State will pay \$53.00 (fifty-three dollars) to the College Board; and
- iv. The student will pay \$0.00 (zero dollars) per exam.

For each AP Seminar Exam and each AP Research Exam taken by students who attend State's public and non-public schools, and who qualify for the College Board AP Exam fee reduction ("Fee-Reduced Exams"), as indicated by the applicable school's AP coordinator, the following will occur:

- i. The College Board will provide a \$34.00 (thirty-four dollars) fee reduction per exam;
- ii. The applicable school will forego its \$9.00 (nine dollars) rebate per exam;
- iii. The State will pay \$101.00 (one-hundred and one dollars) to the College Board; and
- iv. The student will pay \$0.00 (zero dollars) per exam.

The College Board will bill the State directly, based on the number of Fee-Reduced Exams actually administered, as determined by each school and indicated by the applicable school's AP coordinator in the AP Registration and Ordering system.

**C. College Board Provision of Data and License**

Upon the State's request, the College Board will provide participation and performance data ("AP Participation and Performance Data Reports") for State's students who took AP Exams under this contract.

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**EXHIBIT B continued**

The College Board hereby grants State a limited, nonexclusive, nontransferable, non-assignable right to use the AP Participation and Performance Data Reports for the legitimate educational purposes of internal analysis, which includes training sessions, as long as the data used during training preserves the confidentiality of students. State may not use or distribute the score reports externally or to third parties without the express written consent of the College Board.

**EXHIBIT C  
BUDGET**  
Budget (through June 30, 2023)

PRODUCT	DISCOUNTED UNIT PRICE	TOTAL PRICE
2022 AP Exam	\$53.00	\$50,000.00
2022 AP Seminar Exam	\$101.00	
2022 AP Research Exam	\$101.00	
2023 AP Exam	\$53.00	\$50,000.00
2023 AP Seminar Exam	\$101.00	
2023 AP Research Exam	\$101.00	

**Limitation on Price:** In no case shall the total budget exceed the price limitation of \$100,000.00. The College Board will bill the State directly based on the number of exams actually administered.

**Funding Source:** Funds to support this request are available in the account titled Advanced Placement Fee for FY 22 and FY 23, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council approval, if needed and justified:

	<u>FY 22</u>	<u>FY 23</u>
06-56-56-562010-25320000-073-500583 Grants-Non Federal	\$50,000.00	\$50,000.00

**Method of Payment:** College Board will provide a final invoice to the State, not to exceed \$50,000.00, for the 2022 AP Exams by June 30, 2022 and not to exceed \$50,000, for the 2023 AP Exams by June 30, 2023. If otherwise correct and acceptable, payment will be made for 100% of the expenditures listed. Invoices and reports shall be submitted to:

Melissa White  
Administrator  
Academics and Assessment  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301

## EXHIBIT D

### Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

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

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

#### **Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC § 1001 and § 1020.

#### **Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

#### **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Revised 6-25-21

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Contractor Initials

Date 12/16/2021

**Exhibit E**

**Federal Debarment and Suspension**

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
  1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Revised 6-25-21

DS  
TP

Contractor Initials \_\_\_\_\_  
Date 12/16/2021

**Exhibit F**

**Anti-Lobbying**

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract; the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions

<https://www.gsa.gov/forms-library/disclosure-lobbying-activities>

- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Revised 6-25-21

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Date 12/16/2021

## Exhibit G

### Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

#### Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

#### Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

#### Ownership of Intellectual Property

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Contractor Initials os  
TP  
Date 12/16/21

**Exhibit G continued**

The State acknowledges and agrees that the AP Exam, and all items (questions) contained therein, including all copies thereof, all exam materials, and all data included but not limited to all individually identifiable information collected under this Agreement is at all times exclusively owned by the College Board, who is the exclusive owner of all rights therein, in and to the AP Exam, including, without limitation, all copyrights, trademarks, trade secrets, patents, and other similar proprietary rights, and all renewals and extensions thereof. Nothing in this Agreement should be interpreted to indicate that the College Board is passing its proprietary rights in and to the AP Exam to the State except for the license that has been granted.

Contractor Initials   
Date 12/16/21



Certificate of Attestation

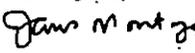
I, James "Jim" Montoya, hereby certify that I am a duly appointed representative of  
(Name)

College Board. I hereby certify that Trevor Packer, is duly  
(Name of Business) (Name & Title of person who signed contract)

authorized to execute contracts on behalf of College Board, and may bind the organization thereby.  
(Name of Business)

I further certify that it is understood that the State of New Hampshire will rely on this attestation as evidence that the person listed above currently occupies the position indicated and that he/she has full authority to bind the organization.

Dated: 01/14/2022

DocuSigned by:  
  
Attest: B97AF54883EC43E...  
James Montoya,  
Chief of Membership, Governance & HE Secretary



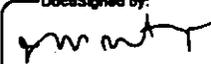
CORPORATE RESOLUTION

I, James "Jim" Montoya, Chief of Membership, Governance & Higher Education & Secretary of College Board, a corporation organized and existing under the laws of the State of New York, hereby certify that the following is a full and true copy of a resolution adopted at a meeting of the Board of Trustees of College Board, held on the 6<sup>th</sup> day of January 2021.

Resolved that Trevor Packer is authorized as of January 6, 2021 to make, execute and approve on behalf of College Board, any and all contracts and to execute and approve on behalf of College Board other instruments, a part of or incident to such contracts; effective until otherwise ordered by the Board of Trustees.

I DO FURTHER CERTIFY that the above resolution has not been in any way altered, amended, or repealed and is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of College Board on this 16<sup>th</sup> day of December 2021.

DocuSigned by:  
  
D97AF54803E043E...

James Montoya,  
Chief of Membership, Governance & HE & Secretary

(Corporate Seal)



Client#:

COLLEBOARD

ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Conner Strong & Buckelew PO Box 99106 Camden, NJ 08101 877 861-3220	CONTACT NAME: Hayden Underwood	
	PHONE (A/C, No, Ext): 856-479-2117 FAX (A/C, No):	
	E-MAIL ADDRESS: hunderwood@connerstrong.com	
INSURED College Board	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: The First Liberty Insurance Corporation	33588
	INSURER B: Liberty Mutual Fire Insurance Company	23035
	INSURER C: Liberty Insurance Corporation	42404
	INSURER D: AIG Specialty Insurance Company	26883
	INSURER E: INSURER F:	

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:				01/01/2022	01/01/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY				01/01/2022	01/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$				01/01/2022	01/01/2023	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A		01/01/2022	01/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liability				01/01/2022	01/01/2023	\$2,000,000 Per Claim \$2,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Addition! Remarks Schedule, may be attached if more space is required)

RE: Contract CB-00028874

## CERTIFICATE HOLDER

## CANCELLATION

New Hampshire Department of Education Attn: Donna Dubey 101 Pleasant Street Concord, NH 03301-0000	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>W. Michael Tognard</i>

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