

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

Owner:	DeKalb County Board of Education
Address:	Sam A. Moss Service Center
	1780 Montreal Rd., Tucker, Georgia 30084
Phone No.:	_____
Fax No.:	_____
Owner's Representative:	_____
Contractor:	STERTIL-KONI USA, INC.
Address:	_____
Phone No.:	_____
Fax No.:	_____

THIS MEMBER SPECIFIC AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2022 by the DeKalb County Board of Education ("Owner") and Stertil-Koni USA, Inc. ("Contractor").

FOR AND IN CONSIDERATION of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Owner and Contractor hereby agree as follows:

1. CONTRACT DOCUMENTS: The term "Contract Documents" as used herein shall mean all of the following:

- A. This Agreement;
- B. Sourcewell RFP No. 013020 for Vehicle Lifts with Garage and Fleet Maintenance Equipment dated December 12, 2019;
- C. Contract No. 013020 between Sourcewell and Stertil-Koni USA, Inc. dated April 11, 2020;
- D. Contractor's Pricing Schedule for Contract No. 013020 dated May 1, 2022; and
- E. Any Work Orders issued pursuant to this Agreement.

The Contract Documents constitute the entire and exclusive agreement between Owner and Contractor with respect to the Work, and supersede any and all prior discussions, communications, representations, negotiations or agreements between them with respect to the Work. The Contract Documents are complementary and are to be read as a whole. In the event of a discrepancy in the Contract Documents, the more specific and more detailed descriptive information will take precedence over the general and less detailed description. In cases of doubt, the Contractor shall assume that the Owner intends that the more complete method, system or process is required. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be performed in accordance with the Contract Documents. Any work, labor, materials or equipment that may be required, implied or inferred by the Contract Documents as being required

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

to produce the intended result shall be provided by the Contractor for the Contract Price. In the event of any conflict between the terms of this Agreement and the Master Services Agreement, the terms of this Agreement shall control.

2. WORK ORDERS: Owner may, from time to time during the Term, order Work through a Work Order. Work Orders shall identify the project, contain a description of the services and/or materials to be provided, and set forth the Contract Time and Contract Price (or the methodology for determining pricing if the Work is to be provided on a time and materials basis). All Work Orders shall be in writing, and Contractor shall not commence Work unless and until the Owner has delivered a signed copy of the Work Order to Contractor. A sample Work Order is attached hereto as Exhibit "A". The execution and delivery of this Agreement does not mean that any work will be awarded to Contractor or that any Work Orders will be issued to Contractor, but merely sets forth the terms and conditions which govern the parties' relationship in the event Work Orders are issued to Contractor.

3. STATEMENT OF WORK: Contractor shall furnish all labor, equipment, materials, services, and facilities required to perform the work described and detailed in the Work Order, all of which together constitutes the "Work". The Work shall be performed in accordance with the terms and conditions of these Contract Documents. If the Work is to be permanently installed on any Owner real property or portion thereof, such real proportion or portion thereof shall be described in the Work Order (each, a "Site"). Contractor represents and warrants that, prior to accepting any Work Order, it has become familiar with the Site and the local conditions under which the Work is to be performed.

4. TIME TO COMMENCE AND COMPLETION: Each Work Order shall set forth the date the Work thereunder is to be commenced and the date of Completion for the applicable project. The term "Completion" shall mean the completion of all Work required by, and in strict compliance with, the Contract Documents, including equipment start-up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations within the Scope of Work as prepared by the Contractor necessary to operate or use the project for its intended purpose.

5. CONTRACT PRICE: Each Work Order shall set forth the Contract Price, if the Contract Price is to be a lump-sum, fixed-price, or shall set forth the methodology for determining the Contract Price if it is based on a time-and-materials or unit-pricing basis.

6. PAYMENT:

- A. Upon Completion of the Work, Contractor shall submit an invoice for payment to Owner for the Contract Price.
- B. If the Contract Price is based on a time-and-materials/unit pricing basis, Contractor shall include with the invoice such information and documentation detailing the rates, time and materials expended on the Work, with such timesheets, invoices, receipts and other supporting documentation and information verifying the amounts for which

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

payment is sought as Owner may reasonably require, calculated at the rates set forth in Contractor's Bid/Proposal/Quote.

- C. Owner shall promptly review such invoice and shall make payment of all undisputed amounts due thereunder within thirty (30) days of its receipt of such invoice, provided that Contractor has provided Owner with all close-out documentation. Owner reserves the right to withhold payment if Contractor, without proper justification, is not making payments to its Subcontractors, if Contractor fails to correct defective work as required hereunder or other good and sufficient cause.
- D. Amounts due hereunder shall not bear interest, and Contractor expressly waives any and all protections set forth in the Georgia Prompt Payment Act.
- E. Acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor against Owner except those previously made in writing to Owner. Neither payment to Contractor nor utilization of the project by the Owner shall be interpreted or construed as an acceptance of any Work which is not strictly in compliance with the requirements of the Contract Documents.

7. TERM: The term of this Agreement is for a period of one (1) year from the date hereof (the "Initial Term"). In addition to the Initial Term, this Agreement also contains additional one-year optional renewal periods as set forth in the RFP (each, a "Renewal Term" and, collectively with the Initial Term, the "Term"), which option may be exercised by Owner solely in its discretion and upon the receipt of such approvals from Owner's Board of Education as may be required. Additionally, as required by O.C.G.A. § 20-2-506, this Agreement shall terminate absolutely and without further obligation on the part of Owner at the end of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed; provided, however, that this Agreement shall be automatically renewed each calendar year unless Owner delivers a notice of non-renewal to Contractor at least thirty (30) days prior to the end of such calendar year, unless this Agreement has otherwise been terminated as provided herein. At the end of the Term, Owner may elect to have Contractor complete any open Work Order(s) or terminate such Work Order(s), in Owner's sole and absolute discretion.

8. CONTRACTOR'S RESPONSIBILITIES:

- A. Pursuant to this Agreement and each Work Order, Contractor shall:
 - (1) have and maintain, at all times during the performance of the Work, all licenses necessary for the performance thereof, and shall obtain and pay for all permits and approvals required to perform the Work;
 - (2) at all times give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work, and promptly notify Owner if it observes any Work which is conflict with any such requirements;

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

- (3) pay all sales, consumer, use and similar taxes for the Work as required by law;
- (4) supervise and direct the Work efficiently and with its best skill and attention, using such means, methods, techniques, sequences and procedures of construction as Contractor deems appropriate, and perform the Work in compliance with the terms and conditions of the Contract Documents and the standard of care applicable to services of the type, scope and complexity assigned to Contractor;
- (5) provide adequate, competent, suitably qualified personnel and labor (including, without limitation, a full-time on-site superintendent unless otherwise noted in the Work Order), equipment, materials, transportation, machinery, tools, appliances, fuel, utilities, sanitary facilities and all other facilities and incidentals necessary or required to perform the Work, all of which shall be maintained in good working order throughout the performance of the Work;
- (6) provide all materials and equipment to be installed in the Work, which shall be new and in first-class condition and which shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processor;
- (7) be fully responsible to Owner for all acts and omission of any Subcontractors and suppliers or other persons directly or indirectly involved in performing the Work, and ensure that all such Subcontractors and suppliers are paid for such work, and indemnify and defend the Owner from any claims with respect thereto;
- (8) be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including all necessary precautions for the safety and protection of, all employees on the Work and others who may be affected thereby, the Work itself, and all other structures and areas adjacent to or on or about the Site;
- (9) keep the Site free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work remove all waste materials, rubbish and debris from and about the Site as well as all tools, construction equipment and machinery and surplus materials, and leave the Site clean and ready for occupancy or use by Owner; and
- (10) cooperate with Owner's designated representative, consult with the Owner's representative before finalizing recommendations or taking action at milestones or other key decision points, provide any requested information and meet, consult and coordinate the Work with Owner's representative.

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

- B. Contractor shall maintain strict discipline among all personnel employed at the Site, and no person under the influence of drugs or alcohol shall be allowed on the property of Owner, nor shall any person employed on the Site have in his or her possession any drugs, alcohol or firearms. Unprofessional conduct, including but not limited to horseplay, wrestling, fighting, or the wearing of clothing containing vulgar, immoral or unwholesome words or images or promoting the same, shall not be permitted or allowed. No employee, Subcontractor or representative of Contractor shall use any tobacco product while at the Site.
- C. Contractor shall indemnify, defend and hold Owner and its Board of Education, officers, employees and agents harmless from and against all claims, liabilities, damages, losses, costs and expenses of every type whatsoever including, without limitation, attorneys' fees and expenses of litigation, in connection with Contractor's performance of the Work, provided that such claim, liability, damage, loss, cost or expense is due (1) to sickness, bodily injury, disease or death, or to (2) loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, in each case to the extent caused by Contractor or anyone for whose acts Contractor is or may be responsible or liable (including, without limitation, any employees or agents of Contractor or any Subcontractors, sub-subcontractors or material suppliers), regardless of whether such claim, liability, damage, loss, cost or expense is caused in part by Owner. Contractor shall not be required to indemnify Owner from any claim, liability, damage, loss, cost or expense caused by or resulting from the sole negligence of Owner; provided, however, the preceding limitation shall not limit or affect any obligation of Contractor under any workers' compensation or coverage or insurance specifically relating to workers' compensation.

9. OWNER'S RESPONSIBILITIES:

- A. The Owner will provide Contractor with an accurate description of the Site and an accurate statement concerning physical conditions at the Site relevant or applicable to the Work including, if appropriate, available surveys, plans or specifications describing the physical characteristics, legal limitations, and utility locations at the Site.
- B. The Owner will provide Contractor and its employees and Subcontractors full and uninhibited access to the Site (or portion thereof on which the Work is to be performed) and any area reasonably necessary to access the Site and perform the Work.
- C. The Owner shall have the right, at its sole discretion, to demand and require that Contractor remove any employee or Subcontractor working on any project and to replace the same, without cost or liability to Owner.

10. TERMINATION OF THE AGREEMENT: Either party may terminate this Agreement and all open Work Orders outstanding hereunder upon the occurrence of any material breach by the other party to this Agreement by giving written notice of such breach to the breaching party,

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

which notice shall describe the alleged breach. This Agreement will terminate after the receipt of such notice unless the breaching party has cured such breach within ten (10) days from its receipt of such notice or, in the event said breach cannot be cured within ten (10) days, has failed to commence and diligently pursue curing of said breach. In addition, the Owner may terminate this Agreement for its convenience at any time and for any (or no) reason. In either case, all outstanding invoices or monies due for Work performed through the termination date shall be due and payable as of the termination date, less any amounts (if any) due to Owner from Contractor. Owner further reserves the right to suspend Contractor's performance of the Work should Contractor repeatedly fail or refuse to perform the Work as required herein, and Contractor shall not be permitted to resume work until such deficiencies have been corrected to Owner's satisfaction. Contractor shall not be entitled to any extension of the Contract Time or increase in the Contract Price as a result of such suspension.

11. SUBCONTRACTORS: Should Contractor enter into any subcontracts in connection with the performance of the Work, all such subcontracts shall be in writing and shall incorporate all the terms and conditions set forth herein. Contractor will not employ any Subcontractor against whom Owner may have reasonable exception, and will not make any substitution for any Subcontractor who has been accepted by Owner except with good cause. Contractor shall be fully responsible for all acts and omission of its Subcontractors. Nothing in this Agreement will create any relationship between Owner and any Subcontractor. Contractor shall indemnify, defend and hold Owner harmless from and against any and all claims for payment made by any Subcontractors and shall, within three (3) days of written demand from Owner, bond off or remove any lien filed against Owner's property by any Subcontractor. Should Contractor fail and/or refuse to remove any such lien, or should any Subcontractor otherwise notify Owner of non-payment by Contractor, Owner may, at its option, make payment jointly to Contractor and its Subcontractor(s).

12. INSURANCE: Contractor shall maintain all insurance policies as required by the Contract. Contractor shall not commence Work under this Agreement or any Work Order until it has obtained all the insurance so-required and delivered certificates of insurance evidencing such coverages to Owner, nor shall Contractor allow any Subcontractor to commence work on a subcontract until Subcontractor has provided the insurance required hereunder. The insurance required shall be maintained in full force and effect during the performance of the Work until Completion. Owner shall be named as an additional insured on all policies (except for Worker's Compensation).

13. PAYMENT AND PERFORMANCE BONDS: Owner reserves the right, at its option, to require Contractor to provide payment and performance bonds in an amount equal to one hundred percent (100%) of the Contract Price for any Work Order or project. In such event, Contractor shall provide such bonds within ten (10) days of Owner's request, issued by a surety acceptable to Owner in its commercially reasonable discretion.

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

14. WARRANTY: Contractor shall warrant all materials and labor as set forth in the Contract.

15. IMMIGRATION COMPLIANCE: Contractor and all Subcontractors shall comply with all state and federal immigration laws, rules and regulations, and the Contractor and all Subcontractors shall provide Owner with the completed, signed and notarized forms required for compliance with the Georgia Security and Immigration Compliance Act, as amended by the Illegal Immigration Reform Act of 2011, O.C.G.A. § 13-10-90 *et seq.*, prior to performance of any Work hereunder.

16. DISPUTE RESOLUTION: All claims, disputes, and other matters in question between the Owner and Contractor arising, out of, or relation to, this Agreement or the breach hereof, shall be mediated in good faith as a prerequisite to litigation. Either party may file a request for mediation at any time; provided, however, that such mediation shall not take place until after Completion has been achieved. The mediation shall take place in Atlanta, Georgia. Each party shall bear its own costs and expenses in connection with such mediation and the parties shall divide and pay the mediator's fees and expenses equally. Should the parties be unable to resolve any dispute or claim in mediation, either party may file a lawsuit in the Superior Court of DeKalb County, Georgia following the conclusion of the mediation. Each party hereby irrevocably consents to the exclusive jurisdiction of such court and the laying of venue therein.

17. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to its conflicts of law principles.

18. NO WAIVER: No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future detail, whether like or different in character.

19. SEVERABILITY: If any provision of this Agreement, or application thereof to any person or circumstance shall to any extent be invalid, such invalidity shall not affect the enforceability of the remainder of the Agreement or its enforceability in relation to other persons or circumstances.

20. NO THIRD-PARTIES: Nothing contained in this Agreement or any Work Order shall create a contractual relationship with or cause of action in favor of a third-party against Owner.

21. INDEPENDENT CONTRACTOR: Contractor shall perform as an independent contractor and not as an employee or representative of Owner. Contractor retains sole and exclusive liability for all contributions, taxes or payment required to be made on account of Contractor's employees under federal or state tax or labor laws, unemployment and workers' compensation acts, social security acts, and all other legislation requiring employer contributions or withholdings.

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

22. BACKGROUND CHECKS: A criminal background check must be performed on all contractors, consultants, subcontractors, volunteers and vendors (“Individuals”) who provide services on Owner’s premises, supervise services on Owner’s premises or have contact with students. All Individuals shall undergo the same criminal background check, within the last 365 days, as required of Owner’s own employees. Such background checks shall be performed by Owner at the expense of the Individual at a cost of \$45.00 per person. Upon receipt and evaluation of the background check, Owner may demand that the Individual have no contact with students or parents, or exclude such Individual from performing work on Owner’s premises or otherwise for Owner, in its sole and absolute discretion. Owner may make such determination regardless of whether such charges may have been dismissed, expunged, sealed, removed from the record, treated under “first offender” status or dead docketed. Any failure by Contractor to obtain a criminal background check for any Individual as required herein, may result in the termination of this Agreement and/or Work Order(s) without penalty to Owner.

23. RIGHT TO AUDIT; COST PRINCIPLES:

- A. Contractor shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information necessary to verify the scope or charges for any services and/or materials provided under this Agreement and any Work Order. Contractor understands and agrees that Owner has the right to review documents and work in progress and to audit financial and other records pertaining to the performance of the Work under this Agreement, whether such records were prepared by Contractor or anyone else associated with the Work. At any time prior to the date which is six (6) years following the final payment under this Agreement, Contractor shall provide Owner, at Owner’s reasonable expense, a copy of all such records within ten (10) business days of a written request from Owner. At any time prior to the date which is six (6) years following final payment under this Agreement, Owner’s rights shall also include access at reasonable times to Contractor’s facilities for the purpose of interviewing employees and inspecting and copying (at Owner’s reasonable expense) such books, records, accounts and other material which may be relevant to a matter under investigation. Contractor shall, at no cost to Owner, furnish reasonable facilities and assistance for such review and audit. Contractor’s failure to provide records or access within the time requested shall preclude Contractor from receiving any payment under this Agreement until such documents are provided. Contractor agrees to maintain such records for a period of six (6) years following final payment under this Agreement.
- B. To the extent that an audit by Owner, Owner’s independent auditors or a designee of any of them, discloses excess charges inaccurately or improperly attributed to this Agreement by Contractor, Contractor agrees to remit the amount of the overpayment to Owner within thirty (30) days after demand.
- C. Contractor agrees that the Contract Cost Principles and Procedures, 48 C.F.R., F.A.R. Part 31, shall be used to determine the allowability of individual items of cost. Any

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

costs for which payment has been made to Contractor that are determined by subsequent audit to be disallowed thereunder shall be repaid to Owner as set forth above.

24. ENTIRE AGREEMENT; AMENDMENT: The Contract Documents, including any and all exhibits attached hereto which are incorporated herein by reference, represents the entire understanding and agreement between the parties hereto relating to the Work and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding same. No amendment or modification to the Work or this Agreement or any waiver of any provision hereof shall be effective unless in writing signed by the party so to be bound thereby.

[Signatures appear on following page]

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT**

IN WITNESS WHEREOF, the parties have caused this Member Specific Agreement to be executed by their duly authorized representative as of the date first set forth above.

OWNER:
DEKALB COUNTY BOARD OF
EDUCATION

CONTRACTOR:
STERTIL-KONI USA, INC.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

DRAFT

**DEKALB COUNTY SCHOOLS
MEMBER SPECIFIC AGREEMENT FOR
TO SOURCEWELL CONTRACT NO. 013020,
VEHICLE LIFTS WITH GARAGE AND
FLEET MAINTENANCE EQUIPMENT
EXHIBIT A – WORK ORDER**

PROJECT/SITE: _____

ISSUE DATE: _____

COMMENCMENT DATE: _____

COMPLETION DATE: _____

WORK REQUESTED: _____

PAYMENT: Lump-sum/Fixed-price: _____

** This Work Order is subject to the terms and conditions of the Member Specific Agreement, the terms and conditions of which are expressly incorporated herein by reference.

OWNER:
DEKALB COUNTY BOARD OF
EDUCATION

CONTRACTOR:
STERTIL-KONI USA, INC.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____