

Type of Contract:
Non-Standard Agreement

WAKE COUNTY PUBLIC SCHOOL SYSTEM
Contract Routing Form 1950

Fiscal Year (FY): 2020-21

Person to Call for Pick up: Melissa Allen Phone: 919-533-7772

Name of Contract: JUUL Lawsuit Contingency Fee Retainer Agreement

If Change Order - (Amount +/-): \$0.00 Total Contract Amount: \$0.00

Board Action: (Required at \$100,000) Yes No Board Meeting Date: June 15, 2021

Budget Code: Not Applicable

Items of Special Note: WCPSS would pay no out of pocket fees or expenses for participating in the case. The attorneys representing WCPSS would be paid on a contingency fee (specifically the attorneys would be paid a share of any proceeds WCPSS receives in the case).

To be completed by the School or Department required for all contracts \$2,500 and up
INITIAL/DATE THIS FORM AFTER YOU HAVE REVIEWED AND APPROVED THE ATTACHED CONTRACT:

	Initial	Date
Fiscal Administrator (\$2,500 and up and all MOAs)	<u>DS</u> <u>TP</u>	<u>6/8/2021</u>
Administrator (\$2,500 - \$9,999 and All MOAs)	_____	_____
Assistant Superintendent or Area Superintendent (\$10,000 - \$99,999 and all MOAs)	_____	_____
Superintendent/Chief Officer (\$100,000+ and All MOAs)	<u>DS</u> <u>CSM</u>	<u>6/8/2021</u>

To be completed by the Administrative Services required for all contracts \$2,500 and up

	Initial	Date
Risk Management (Insurance Review)	<u>DS</u> <u>gcb</u>	<u>6/9/2021</u>
Finance Officer	<u>DS</u> <u>MW</u>	<u>6/9/2021</u>
Chief Business Officer (Required ≥ \$100,000)	<u>DS</u> <u>DN</u>	<u>6/9/2021</u>
School Board Attorney (As required by the Chief Officer or Superintendent)	_____	_____

Comments:
insurance documents should be secured and attached to agreement gcb 6/9/21

Non-standard contract certification - "This instrument has been preaudited in the manner required by the School Budget and Control Act. G.S. 115C-441(a)."

Finance Officer _____ Date _____

POR Approval _____ FIN 25291



Wake County Board of Education

PRECIS

Subject

Harmful Impact of Vaping on Students: Potential Lawsuit Against Juul for the Company's Role in the Vaping Epidemic

Department, Board/Staff Liaison(s) and any Presenters from Outside the District

Keith Sutton, Chair
Cathy Quiroz Moore, Superintendent

Main Points

The Wake County Board of Education will consider whether to file a lawsuit against Juul Labs, Inc. for the harmful effects its products have had on Wake County students. As cigarette smoking among students has declined, the use of e-cigarettes to “vape” has substantially increased. Juul Labs, Inc. is the largest manufacturer of e-cigarettes, controlling the U.S. market. E-cigarette manufacturers have marketed their products as a safer alternative to traditional tobacco products, using fruit and dessert flavors to attract young consumers, resulting in what the U.S. Surgeon General has declared an “e-cigarette epidemic among youth.” A December 2020 report stated that 41% of high school teens in the U.S. had tried vaping and 22% had vaped in the previous 30 days.

Vaping has been marketed as a safe alternative to traditional tobacco products, but Juul products deliver high concentrations of nicotine that lead to addiction. These products have been linked to breathing and lung injuries, seizures, strokes, and death. According to the Center for Disease Control, nicotine can harm adolescent brain development, impacting attention, learning, mood, and impulse control.

Vaping endangers our students' health and has placed a burden on our school system. While more than 100 school systems in the United States have already filed suit against Juul, WCPSS would be the first school district in North Carolina to file a lawsuit against Juul. It will seek to hold Juul accountable for its role in the vaping epidemic. The lawsuit would coincide with and support the 2019 pending case against Juul filed by the North Carolina Attorney General Josh Stein.

Fiscal Implications

WCPSS would pay no out of pocket fees or expenses for participating in the case. The attorneys representing WCPSS would be paid on a contingency fee (specifically the attorneys would be paid a share of any proceeds WCPSS receives in the case).

Savings

Not applicable.

Recommendation for Action/ Next Steps

The Board will review information about the lawsuit against Juul and may take action to approve the contingency fee retainer agreement and the filing of a lawsuit against Juul. The intent of the lawsuit would be to address the harmful impact of this product on students and to hold Juul accountable.

CONTINGENT FEE RETAINER AGREEMENT

WAKE COUNTY PUBLIC SCHOOLS SCHOOL BOARD

This Contingent Fee Retainer Agreement (“Agreement”), is made this 15th day of June, 2021, by and between the WAKE COUNTY PUBLIC SCHOOLS SCHOOL BOARD (“School Board”) and SCHOCHOR FEDERICO and STATON, P.A., WARD BLACK LAW, WALKUP, MELODIA, KELLY & SCHOENBERGER and BARON & BUDD, P.C. (“Applicant Team”).

WHEREAS, the Applicant Team proposes to represent the School Board in connection with claims for damages arising out of the manufacture, marketing distribution and sale of electronic cigarettes against JUUL Labs (“JUUL”) and other defendants (“Claims”); and

WHEREAS, the School Board has agreed to retain the Applicant Team in accordance with the terms of this Agreement.

NOW, THEREFORE, this Agreement provides as follows:

1. The School Board hereby retains the Applicant Team to represent the School Board in connection with the Claims.
2. The Applicant Team will provide such legal services as may be required in order to bring about a resolution of the Claims. Such services may include *inter alia*: investigating the merits of the Claims; drafting and filing a Complaint; handling all pre-trial, discovery and motion proceedings; retaining expert witnesses; monitoring and participating in the Federal Court MDL process as necessary; trying the case; and briefing and arguing any appeal.

3. The Applicant Team will advance the full cost of any expenses necessary or required to be incurred in connection with this matter, without contribution from the School Board except as set forth herein.
4. Payment of a contingent legal fee ("Contingent Fee") and reimbursement of all expenses incurred on behalf of the School Board and paid by the Applicant Team shall be the School Board's sole obligation to compensate the Applicant Team in this matter, except as indicated in paragraph 9.
5. The Contingent Fee shall be payable by the School Board to the Applicant Team and shall be 25% of the gross amount recovered. The payment of fees, as outlined above, is entirely contingent upon the Applicant Team recovering money for the School Board. If the Applicant Team makes no recovery for the School Board, then the School Board will not be responsible for paying any fee to the Applicant Team.
6. In addition to the Contingent Fee payable pursuant to paragraph 5 of this Agreement, the School Board shall reimburse the Applicant Team out of the gross amount recovered the full amount of all expenses incurred on behalf of the School Board, and paid by the Applicant Team in connection with this matter. The School Board is not responsible for advancing any costs for this litigation. If the Applicant Team does not make any recovery for the School Board, then the School Board will not be responsible for reimbursing the Applicant Team for any costs incurred by the Applicant Team in prosecuting the Claim.
7. In the event the School Board terminates this Agreement prior to any recovery on account of the Claims and subsequently recovers any amount on account of such Claims, the School Board agrees to compensate the Applicant Team for those fees

permitted under North Carolina law and reimburse the expenses the Applicant Team incurred on behalf of the School Board in accordance with the terms of paragraphs 6 of this Agreement.

8. All fees paid in connection with the representation of the School Board shall be allocated and disbursed such that all Shared Costs are first reimbursed to the Firm or Firms that advanced them, with the remaining fees payable as follows:

Schochor, Federico, & Staton, P.A.	70%
Ward Black Law	20%
Walkup, Melodia, Kelly & Schoenberger/Baron & Budd, P.C.	10%

9. This Agreement shall be governed by and construed in accordance with the law of the State of North Carolina.
10. It is expressly agreed that this Agreement represents the entire agreement between the School Board and the Applicant Team, that all provisions and understandings between the parties are merged in this Agreement, and that no modification of this Agreement shall be valid except by a writing signed by all parties.
11. In the event that the court or arbitrator requires another party to the litigation (or its counsel) to pay attorneys' fees and/or costs to the School Board and/or the Applicant Team, such award will not affect the amount the School Board is obligated to pay the Applicant Team under this Agreement. If such award is less than the amount that the School Board is obligated to pay the Applicant Team under this Agreement, then such award will be credited toward the total amount owed under this Agreement, and the School Board will be responsible for paying the balance to the Applicant Team out of the gross recovery. If such award is greater than the amount the School Board is

obligated to pay the Applicant Team under this agreement, then the Applicant Team will be entitled to the amount awarded by the court or arbitrator, and the School Board will not owe the Applicant Team any fee.

IN WITNESS WHEREOF, the hands and seals of the parties hereto as of the day and year first above written.

WAKE COUNTY PUBLIC SCHOOLS SCHOOL BOARD

By: _____
Keith Sutton

Board Chair

Title

SCHOCHOR, FEDERICO AND STATON, P.A.

By: _____

Title

WARD BLACK LAW

By: _____

Title

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: _____

Title

BARON & BUDD, P.C.

By: _____

Title

**ADDENDUM #1
FOR CONTINGENT FEE RETAINER AGREEMENT**

This addendum is made by and between Wake County Board of Education (the School System), located at 5625 Dillard Drive, Cary, NC 27518 and SCHOCHOR FEDERICO and STATON, P.A., WARD BLACK LAW, WALKUP, MELODIA, KELLY & SCHOENBERGER and BARON & BUDD, P.C. ("Applicant Team or Provider").

The School System and Provider agree to the terms and conditions set forth in the Contingent Fee Retainer Agreement and the terms included below:

Applicable Wake County Board of Education Policies. Applicant Team acknowledges that the Wake County Board of Education has adopted policies governing its relationship with vendors and conduct on School System property and agrees to abide by any and all relevant WCPSS policies during the term of the contract and while on School System property. WCPSS's Provider related policies can be viewed at <https://www.wcpss.net/Page/45862> and are incorporated into this Contract by reference.

Indemnification. Applicant Team shall indemnify and hold harmless the School System and its agents and employees from and against all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever resulting from the omission or commission of any act, lawful or unlawful, by Applicant Team or its agents and/or employees, including but not limited to court costs and attorney's fees, incurred in connection with the defense of said matters. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2.

Insurance. Applicant Team agrees to maintain Commercial General Liability in amount of \$1,000,000 each occurrence, \$1,000,000 each occurrence in Personal & Advertising Injury with \$2,000,000 General Aggregate, and \$2,000,000 Products/Completed Operations Aggregate. Applicant Team shall maintain \$1,000,000 in automobile liability, and other appropriate insurance, as well as Workers Compensation in the required statutory amount for all employees participating in the provision of services under this Contract. Certificates of such insurance shall be furnished by Applicant Team to the School System. Failure to furnish insurance certificates or maintain such insurance shall be a default under this Contract and shall be grounds for immediate termination of this Contract.

see routing sheet memo

Lunsford Act/Criminal Background Check. The Applicant Team is required to conduct annual checks of contract personnel on the State Sex Offender and Public Protection Registry, the State Sexually Violent Predator Registry, and the National Sex Offender Registry. Under this agreement the contractor or entity shall provide that no individual who is on the State Sex Offender and Public Protection Registry, the State Sexually Violent Predator Registry, or the National Sex Offender Registry be used to deliver goods or services on school system property. Applicant Team must complete the Sexual Offender Registry Check Certification form (**Attachment A**).

Applicable Laws. Applicant Team shall comply with all applicable laws and regulations in providing services under this Contract. In particular, Applicant Team shall not employ any individuals to provide services to the School System who are not authorized by federal law to work in the United States. Applicant Team represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Contract. Applicant Team shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Contract. North Carolina law will govern the interpretation and construction of the Contract. Applicant Team shall comply with the Affordable Care Act and accompanying IRS and Treasury Department regulations.

Restricted Companies Lists. Applicant Team represents that as of the date of this Contract, Applicant Team is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Applicant Team also represents that as of the date of this Contract, Applicant Team is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

Anti-Nepotism. Applicant Team warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Contract are immediate family members of any member of the Wake County Board of Education or of any principal or central office staff administrator employed by the Wake County Board of Education. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Applicant Team become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Contract, Applicant Team shall immediately disclose the family relationship in writing to the Superintendent of the Wake County Public School System. Unless formally waived by the Wake County Board of Education, the existence of a family relationship covered by this Contract is grounds for immediate termination by Owner without further financial liability to Applicant Team.

**ADDENDUM #1
FOR CONTINGENT FEE RETAINER AGREEMENT**

WAKE COUNTY PUBLIC SCHOOLS SCHOOL BOARD

By: _____
Keith Sutton
Board Chair
Title

SCHOCHOR, FEDERICO AND STATON, P.A.

By: _____

Title

WARD BLACK LAW

By: _____

Title

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: _____

Title

BARON & BUDD, P.C.

By: _____

Title

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act. G.S. 115C-441(a).

DocuSigned by:
Mark Winters 6/9/2021
A6D8D05FC819464...
Finance Officer Date

**ADDENDUM #1
FOR CONTINGENT FEE RETAINER AGREEMENT**

ATTACHMENT A

Sexual Offender Registry Check Certification Form

PLEASE SUBMIT THIS FORM TO YOUR OWNER'S REPRESENTATIVE

Project Name: _____ Contract: SCHOCHOR, FEDERICO AND STATON, P.A

Check the appropriate box to indicate the type of check:

Initial Supplemental Annual

I, _____ (insert name), _____ (insert title) of _____ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry (Note: all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>). I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names	Job Title
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10.. _____	_____

I attest that the forgoing information is true and accurate to the best of my knowledge.

_____ (print name)

_____ (signature / date)

**ADDENDUM #1
FOR CONTINGENT FEE RETAINER AGREEMENT**

ATTACHMENT A

Sexual Offender Registry Check Certification Form

PLEASE SUBMIT THIS FORM TO YOUR OWNER'S REPRESENTATIVE

Project Name: _____ Contract: WALKUP, MELODIA, KELLY & SCHOENBERGER

Check the appropriate box to indicate the type of check:

Initial Supplemental Annual

I, _____ (insert name), _____ (insert title) of _____

(insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry (Note: all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov>). I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names

Job Title

- | | | |
|-----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
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| 9. | _____ | _____ |
| 10. | _____ | _____ |

I attest that the forgoing information is true and accurate to the best of my knowledge.

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_____ (signature / date)

**ADDENDUM #1
FOR CONTINGENT FEE RETAINER AGREEMENT**

ATTACHMENT A

Sexual Offender Registry Check Certification Form

PLEASE SUBMIT THIS FORM TO YOUR OWNER'S REPRESENTATIVE

Project Name: _____ Contract: BARON & BUDD, P.C.

Check the appropriate box to indicate the type of check:

Initial Supplemental Annual

I, _____ (insert name), _____ (insert title) of _____ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry (Note: all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>). I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

	Contractual Personnel Names	Job Title
1.	_____	_____
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3.	_____	_____
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5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

I attest that the forgoing information is true and accurate to the best of my knowledge.

_____ (print name)

_____ (signature / date)