

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____ 2008, by and between THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA ("School Board") as the contracting agent for The School District of Osceola County, Florida ("School District") and _____, a _____ Corporation ("Consultant").

1. General Responsibility.

1.01 Services. Consultant agrees that it shall perform consulting services to develop projections of student enrollment during the seven-year period between three and ten years in the future for the purpose of concurrency planning and site selection ("Consultant's Services"). Consultant shall provide such services to Client as specified in one or more mutually agreed-upon statements of work signed by both parties ("Statement of Work"). Each Statement of Work shall contain, to the extent applicable (i) a description of the services to be performed, (ii) a description of any required deliverables, (iii) any associated schedules, (iv) the applicable charges, and (v) such additional information as School Board may require. Consultant hereby represents to School Board that:

- (a) It has the experience and skill to perform the services required to be performed by this Agreement.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that School Board may at any time require Consultant to remove, and Consultant shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of School Board is unfit for the proper performance of his/her duties.
- (c) It shall comply with applicable federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Contract, and shall, if requested by School Board, provide certification of compliance with all registration and licensing requirements.
- (d) It shall perform said services in accordance with generally accepted professional standards in the most expeditious and economical manner, and to the extent consistent with the best interests of School Board and assumes all responsibility for the technical and professional aspects of the services to be performed.

- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The work product of Consultant shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from School Board and such other person.

1.02 Status of Consultant. Consultant acknowledges and agrees that it is acting under this Agreement solely as an independent contractor, and not as a partner, joint venturer or employee of School Board and shall have no authority to act for or bind or obligate School Board in any manner whatsoever, except only to the extent specifically set forth herein or as may hereafter be specifically authorized in writing by School Board. Consultant agrees to perform the Consultant's Services in a diligent, efficient, skillful manner commensurate with the highest standards of its profession. Consultant assumes all liabilities imposed upon Consultant by law as a result of this status, including but not limited to, all legal liability arising out of activities of persons hired, employed or used by or on behalf of Consultant in the performance of Consultant's obligations under this Agreement.

2. Compensation and Payment.

2.01 Compensation. In consideration for Consultant's Services, School Board agrees to pay to Consultant for Consultant's Services a fee based upon a written proposal for the work that has been approved by School Board, which shall be incorporated in the Statement of Work. The fee will be a fixed fee plus reimbursable expenses or, at the School Board's option, shall be based on hourly rates plus reimbursable expenses. Based upon School Board's written Schedule of Fees and Services for a specific project, Consultant will give School Board a detailed written proposal for the work, and shall identify the number of hours of work by category of workers performing the service. The categories must accurately reflect the type of service to be performed, not merely the job description of the employee performing the service. No additional fee or compensation shall be payable to Consultant under this Contract for said services if the actual work by Consultant exceeds the proposal or budget. Expenses shall only be incurred as authorized and provided for by section 112.06, Florida Statutes, and policy 7.52 of School Board.

2.02 Payment. Payment will be made pursuant to the provisions of the Local Government Prompt Payment Act within forty-five (45) days after receipt of Contractor's invoice and completion of services. The School Board shall incur no obligation for payment until issuance of a purchase order to Consultant.

3. Term and Termination.

3.01 Term. The term of this Agreement shall be three years, starting on the date first set forth above. School Board shall have the right to renew this Agreement for an additional term of two years beginning on the expiration of the initial or base term, on the

same terms, covenants and conditions as are contained herein; provided that School Board shall provide written notice of the exercise of this option to Consultant.

3.02 Termination. School Board shall each have the right at any time, acting in its sole discretion, with or without cause, to terminate this Agreement by giving to the Consultant ten (10) calendar days' written notice of such termination. In the event School Board terminates the Agreement, Consultant shall, upon receipt of such notice, immediately stop the Consultant's Services and shall deliver possession of the Work Product (as defined below) to School Board. Upon such termination, School Board's obligations to pay compensation to Consultant under Paragraph 2 shall continue as provided in Paragraph 2.

4. Representations, Warranties, Indemnification, Public Records.

4.01 Compliance with Law and General Conditions. Consultant shall comply with any and all applicable laws, regulations, ordinances, rules, writs and orders of public and governmental authorities relating to the performance of Consultant's Services and the terms of employment of any person, firm, or corporation that is employed in connection with the services to be performed hereunder. Consultant represents that it has taken all steps necessary to reasonably ascertain the nature of the Consultant's Services and the general and local conditions which can affect the Consultant's Services or the cost thereof.

4.02 Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless School Board and its officers, board members, agents, attorneys and employees at every tier and the respective successors and assigns of all of the foregoing, from and against any and all claims, demands, damages, losses, lawsuits and other proceedings, judgments, causes of action, liabilities, claims of lien, liens, civil or criminal penalties and charges, costs and expenses (including, without limitation, attorneys' fees and costs) of any nature whatsoever (collectively, "Claims") to the extent caused in whole or in part by negligent acts or omissions of the Consultant, or anyone employed directly or indirectly by them or for whose acts they may be liable regardless of whether or not such Claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist under the Agreement and/or under the law as to any party described in this paragraph.

This indemnification, defense and hold harmless agreement shall remain in effect whether or not Consultant, School Board, or any other person maintains or fails to maintain insurance coverage for any such claims, costs, expenses, judgments, penalties, liabilities or losses and shall survive the termination of this Agreement.

4.03 Survival. All representations, warranties and indemnifications made or given by Consultant herein, together with any and all causes of action and other rights and remedies which School Board may have as a result of breach of any term or condition, representation or warranty of this Agreement, shall survive any expiration or termination of this Agreement.

4.04 Public Records. This agreement is subject to and governed by the laws of the state of Florida, including without limitation Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the parties.

5. Ownership and Use of Documents.

5.01 Ownership of Work Product. All of the data, notes, estimates, computations, sketches, photographs, presentations, renderings, computer programs and all other materials relating to the Consultant's Services (collectively, the "Work Product") are and shall remain, the property of School Board. Consultant may retain copies, including reproducible copies and intermediate drafts, of the same for information and reference.

6. Insurance.

6.01 Types and Amount of Insurance. Consultant shall pay all premiums therefor and maintain in full force and effect the following insurance:

(a) Workers' Compensation Insurance in compliance with all Workers' Compensation Laws of the State of Florida with coverage as required by the State of Florida.

(b) Commercial General Liability Insurance with limits of liability of at least One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.

(c) Automobile Liability Insurance (including bodily injury and property damage) with limits of liability of at least One Million Dollars (\$1,000,000.00) for each occurrence and in the aggregate.

(d) Professional Liability Insurance, with aggregate limits of liability of at least One Million Dollars (\$1,000,000.00).

6.02 Additional Insureds. School Board shall be named as additional insured in the policies mentioned in Subparagraphs 6.01(b) and (c), above, and, prior to the commencement of any services hereunder and thereafter as coverage expires and is renewed or new coverage obtained, Consultant shall provide School Board with a certificate or endorsement naming School Board as additional insured with respect to that insurance policy. Consultant's insurance policy shall be primary and any insurance maintained by School Board shall be excess insurance only. School Board shall not be required to contribute to the payment of premiums or other costs with respect to Consultant's policy. Consultant's insurance policy shall include a Severability of Interest clause or a Cross Liability endorsement.

6.03 Certificates of Insurance. Consultant warrants that the existence and coverages of insurance evidenced in certificates of insurance delivered to the School District as part of its Qualification Package submitted in response to RFQ #SDOC-08-Q-021LK-FPC remain in full force and effect. Consultant will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on the policies of insurance required under this Agreement, and without request or demand Consultant will promptly provide proof thereof to School Board. If any such policy of insurance is a

“claims made” policy, and not an “occurrence” policy, Consultant agrees to keep and maintain same in full force and effect for a period expiring not earlier than four years after the completion of all consulting services under this Agreement, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of Consultant for all times subsequent to the date of this Contract.

7. Miscellaneous.

7.01 Waiver of Lien. Consultant shall have no right or interest in any of the School Board's properties and hereby waives and releases all liens, stop notice rights or rights of lien now existing or than may hereafter arise, under any present or future law, for work, labor, or services performed or materials or documents furnished under this Agreement, and agrees to furnish a good and sufficient waiver of lien on all of School Board's properties from every person or entity retained or engaged by Consultant in connection with the Consultant's Services and the preparation of the Work Product.

7.02 Assignment. This Contract is for the personal services of Consultant and may not be assigned by Consultant in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Consultant, without the prior written consent of School Board, which consent School Board may withhold in its sole discretion.

7.03 Third Party Meetings and Release of Information. Consultant shall not, without the prior written approval of School Board, make any news release, public announcement, denial or confirmation, or disclosure of any part of the subject matter of this Agreement, to any third party without the prior written consent of School Board. In the event of and prior to any meetings with third parties relating to the subject matter of this Agreement, School Board shall be given the opportunity to approve of and attend such meeting.

7.04 Entire Agreement; Amendments. This Agreement represents the entire and integrated agreement between School Board and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral, between them relating to the subject matter hereof. This Agreement may be amended only by written instrument signed by the party charged to be bound thereby.

7.05 Governing Law. Any dispute, difference, claim or counterclaim between School Board and Consultant arising out of or in connection with this Agreement which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Osceola County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Osceola County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expeditious manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial

7.06 Evaluation. Consultant will be evaluated by School Board during the term of this Agreement, at such intervals as established by School District and at the end of the term.

The results of the final evaluation will be considered at future Consultant selections. A copy of the evaluations will be provided to Consultant upon completion of each evaluation period.

7.07 Lobbying/Solicitation. The Consultant warrants that the Consultant has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the School Board shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

7.08 Notices. All notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) by delivering the same in person to such party, (i) personal delivery, or (ii) overnight courier, or (c) by facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

If to School Board:	Attention: Eric Shawn Houston Assistant Superintendent Facilities and Maintenance Department School District of Osceola County, Florida 809 Bill Beck Boulevard Kissimmee, FL 34744
Telecopy:	(407) 343-8603

If to Consultant:

Telecopy:

By giving the other party at least 15 days written notice, each party shall have the right to change its address and specify as its new address any other address in the United States of America.

7.09 Background Check. The Consultant agrees to comply with all requirements of sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be

permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by the School Board in advance of the Consultant or its personnel providing any services under the conditions described in the previous sentence. The Consultant shall bear the cost of acquiring the background screening required by section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Consultant and its personnel. The parties agree that the failure of the Consultant to perform any of the duties described in this section shall constitute a material breach of this agreement entitling the School Board to terminate immediately with no further responsibilities or duties to perform under this agreement. The Consultant agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Consultant's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes.

7.10. Access to and Retention of Documentation. The School Board, the Federal grantor agency (if federal grant moneys are used in whole or in part), the Comptroller General of the United States (if federal grant moneys are used in whole or in part), the Auditor General, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of Consultant which are directly pertinent to work and services to be performed under this agreement for the purpose of audit, examination, excerpting and transcribing. The parties will retain all such required records, and records required under any state or federal rules, regulations or laws respecting audit, for a period of three years after the School Board has made final payment and all services have been performed under this agreement.

7.11. Compliance with Federal Grant Requirements. If made applicable by the use of federal grant funds in any Project and any other requirement as set out below, Consultant shall comply with the following enactments, rules, regulations and orders:

Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3).

Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor

regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7606), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

7.12 Time. Time is of the essence in connection with this Agreement and each and every provision hereof, and with respect to any schedules and deadlines contained in any Statement of Work.

7.13 Headings. The section headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect any of the terms hereof.

7.14 Waiver. The waiver of either party of any breach or violation of, or default under, any provisions of this Agreement shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default hereunder.

7.15 Safety Precautions and Programs. Consultant shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Consultant's Services, including safety of all persons and property during performance of the Consultant's Services. This requirement will apply continuously and will not be limited to working hours.

7.16 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

7.17 No Third Party Beneficiary. The Consultant's Services are being performed solely for the School Board's benefit and the parties do not intend to confer any benefit hereunder upon any person, firm, or corporation other than the parties hereto.

7.18 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

7.19 Taxes. Consultant shall pay all of its own taxes with regard to all compensation received under the terms of this Agreement and with regard to its performance under this Agreement.

INTENDING TO BE BOUND, this Agreement has been executed as of the date first set forth above.

THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

By: _____
Thomas E. Chalifoux, Jr., Chairman Witness _____

Attest: _____ Date: _____
Blaine A. Muse, Superintendent

CONSULTANT: _____

By: _____ Witness _____

Attest: _____ Date: _____