

AGREEMENT FOR PROFESSIONAL SERVICES – HVAC TEST & BALANCE

THIS AGREEMENT FOR TEST & BALANCING SERVICES (the “Agreement”) is dated this ___ day of _____, by and between the School Board of Osceola County, Florida, a body corporate and public (the “Owner”), whose address is **817 Bill Beck Boulevard, Kissimmee, Florida 34744**, and _____ (the “T&B Firm,” “Consultant” or “T&B Consultant”), a Florida corporation, whose address is _____.

WHEREAS, Owner desires to employ the T&B Firm to perform the services described in this Agreement in connection with _____ (the “Project”) located at _____ and T&B Firm desires to be employed by the Owner; and

WHEREAS, Owner and T&B Firm agree that T&B Firm will furnish, perform, and provide test & balancing and/or commissioning services required for the Project on the terms contained in this Agreement and the parties desire to reduce to writing their Agreement.

NOW, THEREFORE, Owner and T&B Firm, for and in consideration of the provisions, mutual promises, covenants, and conditions herein after set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Agreement.
2. **Contract Documents.** The Contract Documents consist of this Agreement, drawings, specifications, and Addenda issued prior to execution of this Agreement, and the following exhibits:

Exhibit A - Scope of Services

Exhibit B - Project Testing & Balancing Budget

Exhibit C - Project Schedule

Exhibit D - Schedule of Progress Payments and Hourly Rates

Exhibit E – Consultant Reimbursable Expense Guidelines

Exhibit F - Key Employees

Exhibit G - Truth-in-Negotiation Certificate

Exhibits A-G are incorporated into this Agreement by reference and shall be binding on the T&B Firm. In the event of any inconsistency between this Agreement and the General Terms and Conditions of any RFQ, RFP or ITB related to the Project to which T&B Firm responded, Conditions of the Contract for Construction or Exhibits, the provisions of the Agreement shall govern and control.

3. **Scope of Services.** The T&B Firm agrees to furnish and perform professional services for the Project under the terms of the Contract Documents.
 - A. **Scope of Services.** The T&B Firm agrees to furnish and perform professional services for the Project in accordance with the terms and

conditions set forth herein. T&B Firm agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in Exhibit A, General Scope of Services, in connection with the project. The nature and scope of services (hereinafter referred to as “Basic Services”) to be performed by the T&B Firm under this Contract, to the satisfaction of the School Board, shall be identified in Exhibit A. The T&B Firm further agrees to furnish and perform test & balancing services not included as Basic Services (hereinafter referred to as “Additional Services”), when and if such Additional Services are requested and authorized by the School Board, in writing. The Schedule of Hourly Rates for Basic and Additional Services is found in Exhibit D. No Additional Services shall be furnished by the T&B Firm unless specifically requested and authorized by the School board.

- B. Additional Services. The T&B Firm agrees to furnish and perform additional services in connection with the Project. The T&B Firm will perform Additional Services only if those services are requested by the Owner in writing.
4. **Project Schedule.** The T&B Firm shall begin the Basic Services after both parties have executed this Agreement and the T&B Firm has received a written notice to proceed from the Owner. The T&B Firm shall complete the Basic Services in accordance with the Project Schedule attached as Exhibit C.
- A. The parties agree that time is of the essence to this Agreement.
 - B. The schedule for Additional Services, if any, shall be established by the Owner through written notification to the T&B Firm that Additional Services are requested.
 - C. Acceleration. The T&B Firm shall accelerate the performance of Basic Services and Additional Services in the manner directed by the Owner. The Owner has the sole discretion to determine that acceleration is necessary to maintain the Project Schedule. If acceleration is required as a result of delays caused solely by the T&B Firm, the acceleration shall be at no cost to the Owner. If the acceleration is required as a result of delay partially caused by the T&B Firm, the portion of the delay not caused by the T&B Firm shall be treated as an Additional Service and the portion of the delay caused by the T&B Firm shall be treated as a Basic Service at no additional cost to the Owner.
5. **Changes by the Owner.** If the Owner changes the Project Construction Budget, the Project Schedule, or any substantial aspect of the Scope of the Project which substantially changes the Project Construction Budget or Project Schedule, the fees and schedule contained in this Agreement shall be renegotiated in good faith.

6. **Term.** Unless this Agreement is terminated in accordance with Paragraph 10, it shall remain in effect from the date of this Agreement:
- A. If construction is commenced, for a period which may reasonably be required for the design, award of contracts, and construction of the Project, including extra work and any required extension of the Project Schedule; or
 - B. If the construction is not commenced, for a period of twelve (12) months after the completion of the Basic Services called for in the last phase of the work authorized by the Owner, unless otherwise agreed to in writing by the parties.
7. **Fees and Payment.**
- A. **Contract Sum.** Owner agrees to pay T&B Firm a fixed fee of **Dollars (\$ 0.00)** (the “Contract Sum”) for Basic Services. Fees for the specific phases of work shall be made in accordance with Exhibit D, Schedule of Progress Payments and Hourly Rates.
 - B. **Additional Services.** The fees for Additional Services shall be established in accordance with the hourly rates described in Exhibit D.
 - C. **Progress Payments.** Progress Payments shall be made no more frequently than on a monthly basis, in accordance with Exhibit D, the Local Government Prompt Payment Act (Fla. Stat. secs. 218.70 – 218.80)(the “LGPPA”) and the procedures identified in Article 9 of the AIA Document A201-1997 [1987?] General Conditions of the Contract for Construction. The provisions of the LGPPA shall control in the event of conflict or ambiguity with the provisions of Article 9.
 - D. **Reimbursable Expenses.** The Owner shall pay the T&B Firm for certain reimbursable expenses (the “Reimbursable Expenses”) as set forth on Exhibit E.
 - E. Final payment by Owner shall not be construed as acceptance of defective work or services.
8. **Insurance.**
- A. Consultant shall, through the performance of its services pursuant to this Contract, maintain and provide to School Board within 10 days after the date of this Contract a certificate of insurance proving it has the following described insurance coverages:

1. Professional liability insurance (including coverage for the Schedule of Fees and Services to be performed under this Contract), for protection from negligent acts, errors, and omissions of Consultant from or in connection with the performance of Consultant's services. Consultant must maintain a comprehensive liability policy, including errors and omissions coverage, issued to Consultant as the insured. Said policy shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. Said policy shall provide coverage for the acts or omissions of Consultant in a minimum amount of \$1,000,000.00 per claim. Said policy shall contain a maximum deductible of \$25,000.00. Said comprehensive professional liability policy shall be underwritten by an insurer who, in the most current edition of Best's Key Rating Guide, has (1) a rating classification of either "A-," "A," or "A+," and (2) a financial size category rating of Class IV or higher.
 2. Commercial general liability insurance (including broad form contractual coverage), with minimum limits of \$100,000.00 per occurrence and \$300,000.00 per annual aggregate liability for protection from claims for bodily injury (including death) and property damage which may arise from or in connection with the performance of Consultant's services hereunder or from or out of any act or omission of Consultant, its subconsultants, and their officers, directors, agents, and employees.
 3. Automobile liability insurance with minimum limits of \$100,000.00 per occurrence and \$300,000.00 per annual aggregate liability.
 4. Workers' compensation insurance as required by applicable Florida law, or employer's liability insurance with respect to any employee not covered by workers' compensation with minimum limits of \$100,000.00 per accident.
- B. All such insurance required in paragraph (a) shall be with companies and on forms acceptable to School Board, shall name School Board, School Board's representatives, and its agents, employees, and assigns as additional insured, except as otherwise provided by law. The policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to School Board. Certificates of insurance and copies of all policies shall be furnished to School Board within 10 days of the date of this Contract. In the event of any cancellation or reduction of coverage, Consultant shall obtain substitute coverage as required hereunder, without any lapse of coverage to School Board whatsoever.
- C. Consultant shall defend (if required by School Board), indemnify and hold

School Board, School Board's representatives, its agents, employees, and assigns each harmless for and against any and all claims, demands, suits, judgments, damages to persons or property, injuries, losses, or expenses of any nature whatsoever (including attorneys' fees) arising directly or indirectly from or out of any negligent act or omission of Consultant, its sub consultants, and their officers, directors, agents, or employees, any failure of Consultant to perform its services hereunder in accordance with generally accepted professional standards, any material breach of Consultant's representations as set forth in this Contract or any other failure of Consultant to comply with the obligations on its part to be performed hereunder. The provisions of this paragraph shall survive the expiration or termination of this Contract.

- D. Consultant will provide to School Board, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which School Board shall copy and return to Consultant within 7 days, (2) proof acceptable to School Board that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by Consultant, and (3) a certificate of the insurer addressed to School Board evidencing the existence of such insurance coverage. Consultant will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, 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 12 months after construction of Continuing Service Projects is completed, 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.

9. **Indemnity and Hold Harmless.** The T&B Firm shall defend (if required by Owner), indemnify and hold Owner, Owner's construction manager or other agents, professionals, or consultants retained for this Project, and the officers, directors, agents, employees, and assigns of each, harmless for and against any and all claims, demands, suits, judgments, damages to persons or property, injuries, losses, or expenses of any nature whatsoever (including attorneys' fees at administrative, trial and appellate level) arising directly or indirectly from or out of any negligent act or omission of Architect/Engineer, its subconsultants, and their officers, directors, agents, or employees; any failure of T&B Firm to perform its services hereunder in accordance with generally accepted professional standards; any material breach of T&B Firm's representations as set forth in this Agreement; or, any other failure of T&B Firm to comply with the obligations on its part to be performed hereunder. This hold harmless and indemnification is made notwithstanding the right of the

Owner to reuse the plans and its ownership of, and rights to the Original Work Product. The provisions of this paragraph shall survive the expiration or termination, if sooner, of this Agreement. The Contract Sum includes \$100.00 to be paid by the Owner to the Contractor as specific consideration for the provisions contained in this Agreement and in the Contract Documents which provide for indemnity among the parties, as well as their related or affiliated companies, officers, directors, agents and employees. This amount shall be deemed to have been paid out of the first installment payable under this Agreement.

10. Termination, Suspension, or Abandonment.

- A. Termination. Either party may terminate this Agreement for failure of the other party to substantially perform in accordance with the requirements of the Agreement through no fault of the party initiating the termination. Further, the Owner has the absolute right to suspend or terminate this Agreement without cause for convenience at any time upon thirty (30) days prior written notice to the T&B Firm.
- B. Abandonment or Suspension. If the Owner suspends or abandons the Project, the Owner shall pay all fees and Reimbursable Expenses which have become due and payable to the T&B Firm pursuant to Article VIII of the General Terms and Conditions and Exhibit D, Schedule of Progress Payments and Hourly Rates. The T&B Firm shall not be entitled to lost profits for uncompleted work. Payment shall be made for that portion of the work that the T&B Firm completed prior to the abandonment or suspension and the Owner shall have no further obligation to the T&B Firm for the payment for any other fees, unless the Project is resumed by the Owner.
- C. Resumption. If the Owner chooses to resume the Project, the Architect/Engineer shall complete its services under this Agreement and it shall be entitled to payment of any remaining unpaid fees in accordance with the General Terms and Conditions. When it receives a notice from the Owner that the suspension has been canceled, the T&B Firm shall perform all services remaining under this Agreement and it shall be entitled to an extension of time equal to the period of the suspension. If the Project is resumed within 365 days of the date it was abandoned or suspended, the fees payable to the T&B Firm shall be equal to the amounts due under this Agreement which had not been paid by the Owner to the T&B Firm. If the Project is resumed more than 365 days after the date of its abandonment or suspension, then the amounts due to the T&B Firm shall be equal to the amounts due under this Agreement which had not been paid by the Owner to the T&B Firm and shall be adjusted upward or downward in a direct ratio to any increase or decrease in the cost of living in the United States of America (as reflected by the Consumer Price Index kept by the U.S. Department of

Labor) between the date of the abandonment or suspension of the Project and the date of the resumption of the Project.

D. **Payment.** If the Project is suspended or terminated without cause, the Owner shall pay to the T&B Firm only the portion of the Contract Sum which has become due and payable. The remainder of the Contract Sum shall be canceled. Unless the Owner authorizes the T&B Firm in writing, the T&B Firm shall not perform any further services and shall not be entitled to receive payment from the Owner during a period of suspension.

11. **No Assignment.** This Agreement is for the personal services of the T&B Firm and it may not be assigned by the T&B Firm in any manner, whether by operation of law, or by any conveyance, including without limitation, transfer of stock in the T&B Firm, without the prior written consent of the Owner. The Owner may withhold its written consent in its sole discretion.

12. **Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the state of Florida. Osceola County, Florida shall be the proper place of venue for all suits to enforce this Agreement. Any legal proceedings arising out of or in connection with this Agreement shall be brought in the circuit courts of Osceola County, Florida. The parties consent to the jurisdiction of the court and to the service of process outside the state of Florida pursuant to the requirements of the court in any manner submitted to it. Notwithstanding any other provision in the Contract Documents, the Owner does not agree to arbitrate in any manner whatsoever any issue arising out of this Agreement or the Contract Documents. The Owner does not agree to pay attorneys' fees to the prevailing party in connection with a dispute arising out of this Agreement or the Contract Documents.

13. **Waiver of Jury Trial.** The parties expressly waive the right to a jury trial.

14. **Dispute Resolution.** Prior to initiating any litigation related to this Agreement, the parties agree to submit the dispute to nonbinding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees and the costs incurred by such mediation shall be split between the parties.

15. **Subconsultants, Separate Consultants, or Subcontractors.** If the T&B Firm desires to employ subconsultants, separate consultants, or subcontractors in connection with the performance of its services under this Agreement, it agrees to comply with the following:

a. **Owner Approval.** The T&B Firm shall submit any subconsultants, separate consultants, or subcontractors to the Owner for prior written approval. The Owner has the sole discretion to withhold its approval. The Owner shall not be liable to the T&B Firm in any manner whatsoever arising out of the

Owner's objection to a proposed subconsultant, separate consultant, or subcontractor.

- b. T&B Firm Responsibilities. The T&B Firm shall coordinate the work product of any subconsultant, separate consultant, or subcontractor and shall remain fully responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the T&B Firm or its subconsultants, separate consultants, or subcontractors. The T&B Firm shall review or approve items produce or furnished by any subconsultant, separate consultant, or subcontractor prior to submittal to the Owner.
- c. Subconsultant, Separate Consultant, or Subcontractor Responsibilities. Any agreements between the T&B Firm and a subconsultant, separate consultant, or subcontractor for work on the Project shall reflect the terms of this Agreement. To the extent the services are to be performed by the subconsultant, separate consultant, or subcontractor, that third party shall assume the obligations of the T&B Firm towards the Owner. The T&B Firm acknowledges that this does not relieve the T&B Firm from any of its duties under this Agreement.

16. Owner Consultants. The T&B Firm shall cooperate at all times with the Owner and shall cooperate and coordinate with any separate consultant or agent hired by the Owner. The T&B Firm shall incorporate the work product of any Owner consultant in a manner which is appropriate to facilitate the construction of the Project within the Project Construction Budget and Project Schedule.

17. Key Employees. The Owner has relied upon and hired the T&B Firm because of the involvement of certain individuals employed by the T&B Firm who are identified on Exhibit F (the "Key Employees"). The T&B Firm agrees that the Key Employees shall be assigned to the Project. The T&B Firm shall not remove any Key Employee from the Project without the prior written consent of the Owner, for any reason other than termination of the Key Employee's employment by the T&B Firm. The T&B Firm represents and warrants that it possesses a high level of experience and expertise in rendering services with respect to projects of similar or like size, complexity, and nature as the Project. The T&B Firm warrants, acknowledges, and represents that the Owner is relying on the T&B Firm's representation that it possesses sufficient skill, knowledge, experience, and ability to perform fully the services described in this Agreement and it will assign professionals to the Project as needed to guarantee that quality of performance.

18. Consultants' Competitive Negotiation Act. If the total fee paid to the T&B Firm exceeds the threshold amount provided in Section 287.017, for CATEGORY FOUR, the following provisions of the Consultants' Competitive Negotiation Act, section 287.055(5)(a), Florida Statutes apply:

- A. The T&B Firm shall execute and furnish to the Owner a “Truth-in-Negotiation Certificate,” stating the wage rates and other factual unit costs supporting compensation are accurate, complete, and current at the time of executing this Agreement.
 - B. The “Truth-in-Negotiation Certificate” form is attached to this Agreement as Exhibit G.
 - C. The Contract Sum and any additions thereto shall be adjusted to exclude any significant sums when the Owner determines the Contract Sum was increased due to inaccurate, incomplete, or non-current wage rates and other factual costs.
19. **Gender.** Unless the context clearly indicates to the contrary, words singular or plural in number shall be deemed to include the other, and pronouns having a neuter, masculine, or feminine gender shall be deemed to include the others.
20. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters covered by this Agreement. All prior negotiations, representations, and agreements not incorporated in this Agreement are canceled. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representatives.
21. **Right to Enter this Agreement.** Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement, shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performance of its obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full right and authority to enter into this Agreement and to perform its obligations under this Agreement. Upon written request, each party agrees to supply the other parties with evidence of its full right and authority.
22. **Binding Effect.** Each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective assigns, successors, subsidiaries, affiliates, holding companies and legal representatives, as allowed in this Agreement.
23. **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 Planning and Construction
School District of Osceola County, Florida
809 Bill Beck Boulevard
Kissimmee, FL 34744
Telecopy: (407) 343-8603

If to T&B Firm: Attention: **TBD**

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.

24. **Waiver.** No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.
25. **Captions.** The captions used for the Sections in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or the intent of this Agreement or any Article or Section hereof.
26. **Severability.** In the event any of the provisions of this Agreement are determined by a court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision shall materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.

27. **Cumulative Remedies.** All rights, powers, remedies, benefits, and privileges available under any provision of this Agreement to any party is in addition to and cumulative of any and all rights, powers, remedies, benefits, and privileges available to such party under all other provisions of this Agreement, at law or in equity.
28. **Approvals.** Whenever any review or approval is required by any party, such party agrees that such review or approval shall be promptly and expeditiously prosecuted to conclusion.
29. **Further Assurances.** The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.
30. **No Partnership or Joint Venture.** It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the School Board and T&B Firm or any other party, or cause either party to be responsible in any way for the debts and obligations of the other party.
31. **Third Party Beneficiaries.** This Agreement has been made and entered into for the sole protection and benefit of the School Board and T&B Firm, and their respective successors, and no other person or entity shall have any right or action under this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.
32. **No Construction Against Drafter.** Each of the parties has been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorably or unfavorably against any party.
33. “The T & B Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the T & B Firm to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the T & B Firm 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 Owner shall have the right to terminate this Agreement without liability and, at his discretion, to deduct from the Basic Services Compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.”
34. **Public Entity Crime Information Statement** – “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime

may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.”

35. **Background Check.** The T&B Firm 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 T&B Firm or its personnel providing any services under the conditions described in the previous sentence. The T&B Firm 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 T&B Firm and its personnel. The parties agree that the failure of the T&B Firm 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 T&B Firm 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 T&B Firm’s failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes.
36. **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
37. **Assignment.** Neither this agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior, written consent of the other party. There shall be no partial assignments of this agreement.
38. **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.
39. **Access to and Retention of Documentation.** The School Board, the Federal grantor agency (if federal grant moneys use in whole or in part), the Comptroller General of the United States (if federal grant moneys use 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 T&B Firm 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 four years after the School Board has made final payment and all services have been performed under this agreement.

40. Compliance with Federal Grant Requirements. If made applicable by the use of federal grant funds in the Project and any other requirement as set out below, T&B Firm 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).

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be executed as of the day and year first above written.

SCHOOL BOARD OF OSCEOLA COUNTY

By: _____
John McKay, Chairman

Witness _____

Attest: _____
Blaine A. Muse, Superintendent

Date: _____

TBD

By: _____

Witness _____

Attest: _____

Date: _____

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT A

SCOPE OF SERVICES (Includes Project Proposal as Attachment 1)

DESCRIPTION OF SERVICE: Represent the School District as their Consultant in HVAC Test & Balance Services for _____. Anticipated services will include, but not be limited to the following:

1. Provide all services necessary to investigate and inspect HVAC equipment for problems that relate to but not be limited to materials, workmanship, age, warranty, and deterioration.
2. Provide all services necessary for review of HVAC design, preparation of construction drawings and specifications, and provide contract administration and project inspection services for the construction of HVAC equipment for the selected project.
3. Provide a Scope of Work detailing the type of system for the selected project requiring HVAC Test & Balance Services and submit to the School District Representative(s) for approval.
4. Provide technical support in HVAC Test & Balance matters to the Facilities and Maintenance Department.
5. Provide national performance guarantee from A.A.B.C. (Associated Air Balance Council) or N.E.B.B. (National Environmental Balancing Bureau).
6. Provide commissioning per A.A.B.C. standards and guidelines.
7. Review and comment on Educational Specifications, design submittals, and construction documents prepared by other consultants.
8. Review, provide inspection services, and report on specific areas of construction when requested.
9. Provide support with school site analysis, educational specification preparation, construction project budgeting, etc. in accordance with:
 - a. The current edition of Florida State Board of Education, State Requirements for Educational Facilities.
 - b. Osceola County Educational or Ancillary Specifications where required.
 - c. Provisions of the Florida State Board of Education, State Requirements for Educational Facilities, Section 1013 Florida Statutes.
 - d. Current industry standards.
10. Provide services for investigation, identification, analysis, and recommendation with costs for specific school facility problems or needs assigned on selected project(s).
11. Provide technical support by the use of other consultants when specialized areas of expertise are needed.
12. At the School District's option, the selected firm may be requested to attend School Board meetings.
13. Pre-construction plan review will be performed to identify items which may cause problems in obtaining the final balance conditions, as required by the design. The review will include but will

not be limited to; finding overlooked or missing items, elimination of items which may not be required, mechanical items which have caused problems due to malfunction or erroneous data, duct work that could prevent proper distribution, placement of air distribution outlets, etc. Upon completion of the review, a written report of the recommendations will be submitted. Adopted recommendations will be forwarded to the Project Architect and School District Representative(s). The HVAC Test and Balance Consultant will perform a minimum two (2) plan reviews for each construction project. The plan reviews will be performed during the Phase I and Phase II reviews of the project, or as required by the School District Representative(s).

14. Periodic inspections during construction will be made as the job advances. The HVAC Test and Balance Consultant will be required to visit the jobsite and make general inspections of the work being performed. A jobsite checklist will be made during these inspections which will include all items installed. Any discrepancies noted regarding equipment, installation, or placement will be immediately reported in writing to the School District Representative(s). Inspections will continue until completion of the project and each subsequent report will list corrections made from previous reports. The HVAC Test and Balance Consultant will assist the School District Representative(s) with resolving discrepancies and making corrections.
15. Air distribution test and balance or re-balance will include balancing of the air conditioning, ventilating, and exhaust systems to achieve the air quality specified. Prior to proceeding with work, the HVAC Test and Balance Consultant will perform a full inspection of all mechanical systems to determine their compliance with design drawings. A written report of deficiencies will be submitted to the School District Representative(s). Tests and procedures may include, but not be limited to the following:
 - a. Test fan RPM to design requirements;
 - b. Test and record motor running amperage for each phase;
 - c. Make pitot tube traverse at main supply ducts and obtain design CFM at fans;
 - d. Test and record systems static pressures, suction and discharge;
 - e. Test and adjust system for design re-circulated air CFM;
 - f. Test and adjust system for design outside air CFM (heating and cooling);
 - g. Test and record entering air temperatures (dry bulb for heating and cooling);
 - h. Test and record entering air temperatures (wet bulb for cooling);
 - i. Adjust all main supply and return air ducts to proper design CFM;
 - j. Adjust all zones to proper design CFM, supply and return;
 - k. Test and adjust each diffuser, grille, and register to within plus or minus 10 percent of design requirements, if possible. If not possible, balance to optimum performance capability of system and inform the School District Representative(s) in writing;
 - l. In cooperation with the control manufacturer's representatives, setting adjustments of automatically operated dampers to operate as specified, indicated, and/or noted. The HVAC Test and Balance Consultant will check all controls for proper calibrations and list all controls requiring adjustment.
 - m. All diffusers, grilles, and registers will be adjusted to minimize drafts in all areas;
 - n. Fume hood fans will be adjusted to CFM requirements specified. Test of fume hood enclosures will be made to determine velocities across opening in accordance with applicable safety codes.
16. Hydronic systems test and balance or re-balance will include balancing of condenser, chilled and heating hot water circulating systems to obtain water quantities, and temperature differentials through all system components. The HVAC Test and Balance Consultant will perform the tests and adjustments, listed below, in balancing the hydronic systems. Prior to proceeding with work, the HVAC Test and Balance Consultant will perform a full inspection of all mechanical systems to determine their compliance with design drawings. A written report of deficiencies will be submitted to the School District Representative(s). Prior to commencing any tasks in this category, all water systems will be determined by the HVAC Test and Balance Consultant to be free of

construction debris and/or any foreign materials. The work may include, but not be limited to, the following types of tests and procedures:

- a. Perform when requested, performance evaluation of water chiller (centrifugal or reciprocal) in conformance with ARI 550-83 (or latest applicable procedure).
 - b. Test and record pump head at full flow and no flow.
 - c. Record pump motor running amps, volts, and brake horsepower.
 - d. Compare pump operating head and brake horsepower with pump curve for flow verification.
 - e. Test and record flow station pressure drop in corresponding GPM.
 - f. Test and record chiller and condenser pressure drops, and entering and leaving water temperatures.
 - g. Balance condenser water flow cooling tower particularly to each cooling tower basin, and perform an eight hour log study of cooling tower.
 - h. Test and record terminal elements pressure drop, entering and leaving wet and dry bulb temperatures.
 - i. Test and record terminal elements final total heat transfer.
 - j. List water metering device readings.
17. Sound analysis, if requested by Owner, the HVAC Test and Balance Consultant will conduct tests in selected areas of the building as specified. Sound level readings will be measured in decibels on the A and C scales of the General Radio Sound Level Meter or equal sound level meter that meets the current American Standard procedures based on the acoustic referenced power of db/re 10.13 watts. Readings will set forth the total random sound level of the selected rooms or areas with the system in operation as compared to total background sound level with the system not in operation.
18. The system increase over the background level will be recorded in decibels on the A and C scales. If sound levels are above those specified, adjustments will be made to bring the sound level within the range set forth, if possible, with the equipment installed.
19. A corrective action report will include all test results by building number and room number where the various tests occurred. Reading and thermal analysis performed during the major component performance analysis will be stated and compared with the manufacturer's specifications of the components. Problems will be generally and specifically identified and recommendations for corrective action(s) will be provided to the School District Representative(s).
20. Corrective action inspection will occur upon completion of those items selected by the School District Representative(s) from the corrective action report for repair, adjustment, or clearing. The HVAC Test and Balance Consultant will submit a written report to the School District Representative(s) providing the results of the inspection prior to proceeding with the test and balance of air distribution and hydronic systems.
21. Instruction of operation to School District personnel will occur upon completion of the testing and balancing of all systems. The HVAC Test and Balance Consultant will provide a thorough review of the final HVAC Test and Balance report including any open deficiencies and design concerns to the School District Representative(s).
22. The following services will be provided under work designated New Construction:
- a. Pre-construction plan review;
 - b. Periodic inspection during construction;
 - c. Air distribution test and balance;
 - d. Hydronic systems test and balance;
 - e. Sound analysis, if requested;
 - f. Reporting results to the School District Representative(s) of inspections, tests, and/or work performed;

g. Instruction of operation to School District personnel.

23. The following services will be provided under any work designated Existing Facilities:

- a. Major component performance analysis;
- b. Corrective action report;
- c. Corrective action inspection;
- d. Air distribution test and balance;
- e. Hydronic systems test and balance; and,
- f. Reporting results of inspections, tests, and/or work performed to the School District Representative(s).

24. The following services will be provided under any work designated Consultations and Trouble Shooting:

- a. When directed, investigate problems of existing systems;
- b. Report findings of investigation;
- c. If directed, perform corrective work to make system operative or more efficient.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT B

PROJECT TESTING AND BALANCING BUDGET

HVAC Test and Balance Firm will take care of work within cost parameters set forth by Owner and CM. HVAC Test and Balance Firm to request any construction cost breakdown necessary to complete its scope of work, from the Owner.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT C

PROJECT SCHEDULE

Owner has entered into a GMP Agreement with the Construction Manager for a total Project schedule, including an opening of _____. HVAC Test and Balance Firm will coordinate with the Owner and CM to take care of the work within the schedule parameters.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT D

SCHEDULE OF PROGRESS PAYMENTS AND HOURLY RATES

Not to Exceed Fee for Basic Services shall be established and paid in accordance with the Contract and this Exhibit as follows:

Billing and Payment shall be at completion phases of work established by Purchase Order or Work Order, and per the Project Proposal (Attachment 1), on a monthly basis. HVAC Test and Balance Firm shall invoice on Purchase Orders issued by Owner.

HVAC Test and Balance Services
TBD

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT E

CONSULTANT REIMBURSABLE EXPENSE GUIDELINES

The Fee as described in the Agreement for Professional Services (Section 7, Fees and Payment) is all-inclusive and fixed. Travel and other expenses shall not be paid unless provided for in Attachment 1.

No other expenses or costs will be reimbursed, without prior written authorization received from the Owner.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT F

KEY EMPLOYEES

Identify team members responsible for this project and their areas of responsibility.

Member

Title

Responsibility

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT G

TRUTH IN NEGOTIATION CERTIFICATE

The wage rates and other factual unit costs supporting the compensation under the Agreement between the School Board of Osceola County, Florida and _____ dated _____ are accurate, complete and current as of the time of entering into the contract. This Certificate is executed in Compliance with Section 287.055 (5) (a) of the Florida Statutes.

DATED this ____ day of _____ 2008.

By:

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____ as its _____, who, after first being duly sworn, deposes and says that the foregoing Truth In Negotiation Certificate is true and correct to the best of his/ her knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2008, by _____ (type/print name of affiant).

Notary Public (printed name)

Personally known to me _____; or has produced identification
Type of identification produced:
