

**THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA**

**CONTINUING SERVICE AGREEMENT FOR PERMIT  
PLAN REVIEW, PROFESSIONAL BUILDING CODE  
INSPECTION SERVICES AND BUILDING OFFICIAL  
ADMINISTRATION**

**DRAFT CONTRACT FOR RFQ # SDOC 09-Q-084 KR-FPC  
CONTINUING SERVICE AGREEMENT**

THIS CONTINUING SERVICE AGREEMENT (the "Agreement"), made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA (hereinafter referred to as "School Board"), a body corporate and \_\_\_\_\_ (hereinafter referred to as "Consultant"), a \_\_\_\_\_ with its principal office located at \_\_\_\_\_, Florida.

WHEREAS, School Board desires to obtain professional architectural and/or engineering services consisting of PERMIT PLAN REVIEW, CODE INSPECTION AND BUILDING OFFICIAL ADMINISTRATION services expeditiously when a need arises in connection with a study or a partial or complete Osceola County Public Schools construction project; and

WHEREAS, School Board has selected Consultant in accordance with the provisions of the Florida Statutes, and Consultant has agreed to provide professional architectural and/or engineering services consisting of Permit Plan Review, Code Inspection and Building Official Administration and related services as directed by School Board for such projects and tasks as may be required from time to time in accordance with the procedures and terms provided herein. As authorized and directed by School Board in a Work Authorization, the related services shall include, but are not limited to, inspection services, plan review services, and building code compliance services are described in the Florida Building Code and the Florida Fire Prevention Code, as said codes may be amended from time to time.

WHEREAS, School Board may, at its option, at a regular or special Board meeting, renew this Agreement at the end of the each year for a maximum term of three years; and

WHEREAS, it is the primary intent of this Agreement to ensure that Consultant is available to provide professional services, in accordance with prior, mutually agreed upon conditions, and School Board has complied with all requirements of the Consultants Competitive Negotiations Act, in the selection and in negotiations for this Agreement.

NOW, THEREFORE, School Board and Consultant, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter 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. Scope of Services.
  - 2.1 The Consultant's services consist of those services performed by the Consultant, Consultant's employees, and Consultant's Sub-Consultants as

enumerated and described in Attachment A - Scope of Services in connection with the Continuing Service Agreement.

- 2.2 The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the School Board, the Consultant shall submit within 48 hours for the School Board's approval, a proposal for the performance of the Consultant's services. The proposal shall contain a description of scope of proposed service, schedule upon which services will be provided, and all fees for services as described in Article 5. Time limits established by this proposal as approved by the School Board shall not, except for reasonable cause, be exceeded by the Consultant or School Board.
  - 2.3 The Consultant shall use the Project Team as designated on the Professional Qualifications Supplement provided. The Consultant shall not remove or replace any members of the Project Team, except upon written approval by the School Board based upon good cause shown.
  - 2.4 All Plan Review and Inspection services rendered by the Consultant shall be conducted by persons certified in accordance with Chapter 468 Part XII Florida Statute and other applicable statutes. All Fire Prevention Plan Review and Inspection services rendered by the Consultant shall be conducted by persons certified in accordance with Chapter 633 Florida Statutes for Florida Fire Prevention Code Services, and other applicable statutes. Proof of Certification for each individual providing services shall be provided by the Consultant to the School Board prior to services being rendered.
  - 2.5 The Consultant's services shall be provided per minimum code requirement in Section 553.73, and Chapter 633 Florida Statutes and in accordance with the Administrative Rules, Policies and Procedures of the School Board.
3. Construction Cost.
    - 3.1 If the project construction cost is to be used as the basis for determining the Consultant's compensation for Basic Services, it shall be the Building Construction estimate that is being used by the School Board at the time of the School Board's request for proposal.
    - 3.2 In the event that the scope of Work is increased after the construction agreement is awarded the School Board may give written approval of an adjustment in the Building Construction Cost Estimate and consultant's compensation as provided under Attachment B.

4. **Time of Completion.** Consultant shall commence Basic Services upon receipt of the notice to proceed and a purchase order issued by School Board. Consultant shall include in its proposal a schedule for each Continuing Service Project. The schedule will be agreed upon on a project by project basis. Consultant shall complete work in accordance with the schedule, it being understood that time is of the essence in this Agreement. Consultant shall accelerate performance of Basic Services and Additional Services in the manner directed by School Board, in the event School Board, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule.
  
5. **Fees.** School Board agrees to pay to Consultant for Basic Services, as set forth in Attachment A, a fee based upon an approved written proposal for the work. The fee will be a fixed fee based on the construction cost of the project plus reimbursable expenses as set forth in Attachment B and Attachment D or, at the School Board's option, shall be based on hourly rates plus reimbursable expenses as set forth in Attachment C and Attachment D. 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, which shall be in the format shown in Attachment E, 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 Agreement for said services if the actual work by Consultant exceeds the proposal or budget.
  - (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Agreement.
  - (b) Invoices received by the Building Department on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
  - (c) The responsibility of Consultant for performing its obligation under this Agreement is not relieved or affected in any respect by the presence of or inspection by employees or agents of School Board.
  - (d) Reimbursable expenses shall include only the actual and necessary costs and expenses reasonably and properly incurred with outside vendors by Consultant in connection with the services rendered under this Agreement, as identified in Attachment D. Consultant shall provide any documentation required by School Board in connection with reimbursable expenses incurred. Such reimbursements, if any, shall be paid to Consultant at the times and in the manner set forth in Attachment D. The Consultant hereby waives all rights to payment by the Owner for otherwise Reimbursable Expenses when (a) the expense was incurred more than ninety (90) days before the date on which the Owner receives the first

valid invoice from the Consultant requesting payment for that expense; (b) the first invoice for that expense is not accompanied by detailed, credible, and legible documentation indicating the project-related nature of the expense; or (c) that evidence is produced in a form that is inconsistent with the form of the invoice.

- (e) Consultant's fee for Additional Services will be computed in accordance with hourly rates as described in Attachment C. If any additional services are rendered or furnished by professional consultants engaged by Consultant, and such additional services consist of normal services for which Consultant would be entitled to an additional fee if it had furnished the services, then School Board shall reimburse Consultant for such actual reasonable amounts paid by Consultant to such consultants for such additional services, and Consultant shall not be entitled to any additional fee or compensation.
  - (f) Additional services which require no work on the part of Consultant, other than administering the work of a consultant, that is, securing the services, approving the work, and invoicing on behalf of the consultant, the Consultant may request five percent (5%) markup on the consultant's fee to cover its administrative costs.
  - (g) Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees 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, School Board shall have the right to terminate this Agreement without liability and, at its discretion, deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
  - (h) For any inspection that has been requested by the contractor that cannot be executed due solely to causes under the control of the contractor, and for any inspection that fails to meet the minimum standards of the Florida Building Code and for which the inspector has to return on another day to confirm the corrected action, the Consultant shall be entitled to a inspection fee of \_\_\_\_\_ (\$\_\_\_\_.00).
  - (i) The fee structure and hourly rates may be revised only by written amendment, agreed to by both parties to this agreement.
6. Ownership of Documents. Consultant shall make available to School Board all reproducible copies tangible work product produced, originally developed, or

submitted to School Board by Consultant pursuant to this Agreement (hereinafter referred to as the "Original Work Product").

- (a) Consultant shall deliver reproduced copies of all Original Work Product to School Board upon completion, unless it is necessary for Consultant, in - School Board's sole discretion, to retain possession for a longer period of time. Upon early termination of Consultant's services, Consultant shall deliver all Original Work Product, whether complete or not. School Board shall have the right to use any and all work product. Consultant shall retain copies for its permanent records; however, the same cannot be used without School Board's prior express written consent. Consultant agrees not to recreate any work product contemplated by or originally developed under this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by Consultant. If said work product is used by School Board for any purpose other than that purpose which is intended by this Agreement, the School Board shall if and to the extent allowed by law, and without waiving the limits of sovereign immunity indemnify Consultant from any and all claims and liabilities which may result from such reuse, in the event Consultant does not consent to such reuse.
- (b) School Board exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for School Board as the author, creator, or inventor thereof upon creation, and School Board shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Consultant shall assign to School Board, all rights without limitation, including the copyright with respect to such work. The Consultant acknowledges that School Board is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

## 7. Insurance.

- (a) Consultant shall, through the performance of its services pursuant to this Agreement, maintain and provide to School Board within 10 calendar days after the date of execution of this Agreement or prior to providing services, whichever is sooner, 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 Agreement), 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 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. If Consultant maintains "claims-made" policies, Consultant shall obtain and pay for a reporting endorsement or "tail" coverage that shall extend coverage for a period of four (4) years after the termination of this Agreement or any extension thereof.

2. Commercial general liability insurance (including broad form contractual coverage), with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 per annual aggregate (per policy year) 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 sub consultants, and their officers, directors, agents, and employees.
  3. Automobile liability insurance with minimum limits of \$1,000,000.00 per accident bodily injury and property damage.
  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 \$1,000,000.00 per accident.
- (b) All such insurance required in paragraph (a) shall be with companies and on forms acceptable to School Board. Commercial General Liability and Automobile Liability insurance 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 calendar days after the date of execution of this Agreement or prior to providing services, whichever is sooner. 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 Agreement 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 Agreement.
- (d) Consultant will provide to School Board, within 10 calendar days after the date of execution of this Agreement, (1) at School Board's discretion 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 Agreement 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 Agreement.

8. Representations. 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 Agreement, 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.
  - (e) It is adequately financed to meet any financial obligations it may be required to incur under this Agreement.
  - (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.
9. Documents and Copies. Consultant agrees to furnish and provide to School Board the number of copies identified in Attachment A of all reports and other documents (except correspondence) prepared by Consultant under this Agreement, at its own expense. Generally, Consultant will provide a maximum of three (3) copies to the School Board as part of its overhead. The copies shall be furnished as they are prepared and completed by Consultant, and if School Board requires additional copies, Consultant shall promptly furnish the copies to School Board at a reasonable cost for the reproduction.
10. Expense Records. CONSULTANT shall keep adequate records and supporting documentation which concern or reflect its Services hereunder. The records and documentation shall be retained by CONSULTANT for a minimum of four (4) years from the date of termination of this Agreement or the date the Work Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. Consultant agrees to keep and maintain all of its direct personnel expense records, consultant expense records and other expense records, pertaining to Continuing Service Projects, and its record of accounts between Consultant and School Board pertaining to Continuing Service Projects, on a generally recognized and acceptable accounting basis, and the same shall be available to School Board or its authorized representatives at all reasonable times for inspection and copying at the offices of Consultant in which such records are kept in the ordinary course of business, or at any other mutually agreeable location. Consultant agrees to keep and maintain accurate time records to within the nearest half of an hour for each time entry, of all work performed by Employees of Consultant, and same shall be available to School Board or its authorized representatives at all reasonable times for inspection and copying.

11. Termination, Suspension, Disputes, or Abandonment. Either party may terminate this Agreement for failure of the other party to substantially perform this Agreement. School Board shall have the absolute right and option to suspend or terminate this Agreement without cause provided that 30 days written notice is provided to Consultant.
- (a) If Continuing Service Projects are abandoned or suspended by School Board, School Board shall pay Consultant all fees which have become due and payable to Consultant for that portion of the work of Consultant completed prior to such abandonment or suspension, and School Board shall have no further obligation to Consultant for payment to Consultant of the remainder of its fees, unless and until Continuing Service Projects are resumed by School Board. Consultant, at the option of School Board, shall complete the services of Consultant under this Agreement upon resumption by School Board of Continuing Service Projects, and Consultant shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Agreement, same to be payable at the times and in the manner specified in this Agreement. In no event will any fee or part thereof become due or payable to Consultant under this Agreement unless and until Consultant has attained and completed that stage of work where the same would be due and payable. If Continuing Service Projects are resumed by School Board within 365 days after it was abandoned or suspended, the fees and compensation payable by School Board to Consultant for the work of Consultant hereunder subsequent to such resumption shall be the amounts provided in Attachment C or D as applicable and Attachment D not previously paid by School Board to Consultant. If Continuing Services Projects are resumed by School Board subsequent to 365 days after its abandonment or suspension, the unpaid balance of the fees and compensation payable by School Board to Consultant pursuant to the provisions of Attachment D shall be adjusted upward or downward in direct ratio to any increase or decrease in the cost of living in the United States of America, between the date of such abandonment or suspension of Continuing Service Projects and the date of such resumption thereof, as reflected by the Consumer Price Index for all items prepared and kept by the U.S. Department of Labor.
- (b) In the event of any such suspension or termination without cause, School Board shall pay to Consultant only that portion of the fee and compensation hereunder for the Basic Services of Consultant which has become due and payable to Consultant under the provisions of this Agreement, and the remainder of Consultant's fees under this Agreement shall be cancelled. Unless School Board authorizes Consultant to the contrary, Consultant shall not perform any services and shall not be entitled to receive payment from School Board on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from School Board that the suspension has been

canceled, Consultant shall perform its remaining services in accordance with the terms of this Agreement and Consultant shall be entitled to time extension equal to the period of suspension.

- (c) School Board's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the School Board.
12. Assignability. This Agreement 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.
  13. Errors and/or Omissions. It is the intent of the parties hereto that Consultant be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of Consultant under this Agreement. School Board shall hold Consultant harmless for any loss or claim related to an error or omission caused solely by the negligence of the School Board.
  14. Subconsultants/Separate Consultants. The Services to be performed hereunder shall be performed by the staff, subconsultants and subcontractors identified in Attachment A, unless otherwise authorized in writing by School Board. The employment of, Agreement with, or use of the services of any other person or firm by consultant, as independent consultant or otherwise, shall be subject to the prior written approval of school board. No provision of this Agreement shall, however, be construed as constituting an agreement between School Board and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against School Board beyond such as may otherwise exist without regard to this Agreement.
  15. 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 expedient 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.
  16. Consultant's Competitive Negotiation Act.
    - (a) If the total fee paid to Consultant exceeds the threshold amount provided in Section 287.017 for CATEGORY FOUR, the following provisions of

the Consultant's Competitive Negotiation Act, Section 287.055(5)(a), Florida Statutes, shall apply:

- (1) Consultant shall execute and furnish to School Board 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 the Agreement.
  - (2) The "Truth-in-Negotiation Certificate" Attachment F form will be furnished to Consultant by School Board upon request.
  - (3) The original Agreement amount and any additions thereto shall be adjusted to exclude any significant sums when School Board determines the Agreement amount was increased due to inaccurate, incomplete, or non current wage rates and other factual costs.
17. Entire Agreement. 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. This Agreement may be amended only by written instrument signed by both School Board and Consultant.
  18. Evaluation. Consultant will be evaluated by School Board during the Agreement period, at 6-month intervals established by School Board, and at the end of the construction of Continuing Service Projects. The results of the final evaluation will be considered at future Consulting selections. A copy of the evaluations will be provided to Consultant upon completion of each evaluation period.
  19. Attachments. The Attachments, A-F, are incorporated herein by reference and shall be binding on the Consultant. In the event of any inconsistency between the Attachments and this Agreement, the provisions of this Agreement shall govern and control. Similarly, Continuing Service Projects Manual is incorporated herein by reference, and in the event of any inconsistency in Continuing Service Projects Manual and the terms of this Agreement, this Agreement shall control.
  20. Background Check. 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. If required by statute or School Board Rule, this background screening shall be conducted by the School Board in advance of Consultant or its personnel providing any services under the conditions described in the previous sentence. 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 Consultant and its personnel. The parties agree that the failure of 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. 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 10 12.465, Florida Statutes.

21. 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 Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
22. Key Employees. School Board has relied upon and hired the Consultant because of the involvement of certain individuals employed by the Consultant who are identified on Attachment G (the "Key Employees"). The Consultant agrees that the Key Employees shall be assigned to the Project. The Consultant shall not remove any Key Employee from the Project without the prior written consent of School Board, for any reason other than termination of the Key Employee's employment by the Consultant.
23. 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.
24. 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, Agreement, 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.

The Superintendent of Schools, or any person designated, in writing, by the Superintendent, may authorize the provision of services or execute Work

Authorizations pursuant to the Agreement so long as the fees authorized for services related to any project do not exceed \$\_\_\_\_\_.

25. 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.
26. Notices. Unless otherwise provided, 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, by (i) personal delivery, or (ii) overnight courier, or (c) telecopy or 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). All notices shall be given to the addresses set forth below. Notices delivered personally, by overnight courier or delivered by facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the postmark date.

If to School Board:

Chief Facilities Officer  
School District of Osceola County, Florida  
809 Bill Beck Boulevard  
Kissimmee, FL 34744  
Telecopy: (407) 518-2985

If to Consultant:

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 as any other address in the United States of America.

27. 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.

28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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 Consultant or any other party, or cause either party to be responsible in any way for the debts and obligations of the other party.
34. Third Party Beneficiaries. This Agreement has been made and entered into for the sole protection and benefit of the School Board and Consultant, and their respective successors, and no other person or entity shall have any right or action under this Agreement.
35. 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.
36. Public Entity Crime Information Statement and Debarment.—Section 287.133(2)(a) of the Florida Statutes states; “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.” By signing this Agreement, Consultant certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
- (b) Have not, within a five-year period preceding the date hereof been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Agreement under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- (c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).
- (d) Have not within a five-year period preceding the date hereof had one or more public transactions (federal, state or local) terminated for cause or default.

Consultant agrees to notify School Board within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described in paragraphs 36(a) – (b) above, with respect to Consultant or its principals.

- 37. 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.
- 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 Documentation. Consultant shall, concurrently with performance of its services, prepare substantiating records regarding services rendered, and shall retain in its records copies of all written communications, and any memoranda of verbal communications, related to such services. 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 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. Upon seven calendar days' written notice, from the date first above written to the latest date described in paragraph 40 below, Consultant shall make its records available during normal business hours to the School Board or any of the entities mentioned in the second sentence of this paragraph. Such entities shall be entitled to inspect, examine, review and copy the records within adequate work space at the Consultant's facilities. Without limitation and not in derogation of any other provision of law, failure of Consultant to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by School Board to Consultant pursuant to this Agreement.
40. Retention of Documentation. Consultant shall retain all such records as described in paragraph 39 above, 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.
41. Compliance with Federal Grant Requirements. If made applicable by the use of federal grant funds in the Project or 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 Agreements awarded in excess of \$10,000 by grantees and their Agreementors 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 Agreements in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Sections 103 and 107 of the Agreement 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 Agreements awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other Agreements 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). (Agreements, subAgreements, 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.

Attest: \_\_\_\_\_

Consultant: \_\_\_\_\_

\_\_\_\_\_  
Name, Title & Corporate Seal

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE SCHOOL BOARD OF OSCEOLA  
COUNTY, FLORIDA

Attest: \_\_\_\_\_  
Michael A. Grego, Ed.D.  
Superintendent

By: \_\_\_\_\_  
John McKay, Chairman

Date: \_\_\_\_\_

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

ATTACHMENT A

SCOPE OF CONSULTANT'S BASIC SERVICES

- 1.0 DEFINITION
- 1.1 The Consultant's Basic Services consist of those described in Paragraphs 2.0 and 3.0 in their entirety as part of Basic Services, and include plans review and inspection services for applicable code compliance, as well as services of any special Consultants included as a part of the Project Team on the Consultant's Professional Qualifications Supplement.
- 2.0 DOCUMENT REVIEW PHASE (If authorized by the School Board)
- 2.1 Upon request of the School Board, the Consultant shall meet with the School Board to ascertain the requirements of the project.
- 2.2 Upon request of the School Board during project design the Consultant shall review the design documents to ascertain whether the construction indicated is in accordance with the requirements of both or each of the Florida Building Code and the Florida Fire Prevention Code, as requested.
- 2.3 The Consultant shall examine all project Construction Documents submitted for permitting, including but not limited to drawings, specifications, computations, and additional data, and no more than two (2) --except upon mutual agreement by both parties --re-submittals, and shall ascertain whether the construction indicated is in accordance with the requirements of the applicable technical codes and all other pertinent laws or ordinances. The School Board will supply the consultant with a minimum of three (3) complete sets of signed/sealed documents for review, two of which will be returned to the School Board. The consultant will retain one for record purposes. The document examination shall comply with Section 104.3.1.1 entitled "Minimum plan review criteria for buildings" of the state adopted codes. Florida Fire Code Prevention plan review and inspections shall be as required by Ch. 633, F.S. and the State Fire Marshall.
- 2.4 The Consultant shall prepare, from each document examination, written report in the form specified by the School Board, indicating all proposed construction activities not in compliance with the minimum codes. Comments shall include a reference to the code section not complied with. The report shall be provided to the School Board within 14 days of School Board's acceptance of the Consultant's proposal for service or receipt of Construction Documents.
- 2.5 At the School Board's option, the Consultant shall meet with the School Board, and its agents for no more than two (2) meetings, except upon mutual agreement by the parties, to review non-compliant conditions stated in the review report.

- 2.6 When all documents, reviewed by the Consultant, are determined to be in compliance with all applicable codes, the Consultant shall provide written certification of compliance to the School Board.
- 2.7 Upon completion of document review the Consultant shall stamp all construction document sets provided "Reviewed for Code Compliance", retain one (1) copy for record purposes and return two (2) copies to the School Board, one which will be kept at the jobsite for construction and inspections.
- 3.0 INSPECTION OF CONSTRUCTION PHASE (if authorized by the School Board.)
- 3.1 The Consultant shall visit the site as inspections are called for at intervals stated in section 105.6 "Required Inspections" Florida Building Code, state adopted codes, or as otherwise agreed by the School Board and Consultant, to determine if the Work is being performed in compliance with applicable codes.
- 3.2 Inspections shall be conducted within 24 hours of a request for inspection or as otherwise agreed upon by the Permit Holder.
- 3.3 If the Consultant determines while making an inspection that certain work requiring an inspection has been concealed, he/she shall immediately notify the Building Official and inform him/her of the condition. If determined necessary by the Consultant and the Building Official, the Contractor shall be directed to remove the obstruction concealing the work so the Inspection may proceed.
- 3.4 Upon completion of each inspection, the Consultant shall submit a written inspection report in the form specified by the School Board. The Consultant shall provide digital photographic record, in the form specified by the School Board, of all conditions identified as non-compliant and reference the specific code edition and section not complied with. Copies of the Inspection report shall be provided to the Building Official and the Contractor within 24 hours of inspection. The Inspector shall inform the Contractor of the results of the inspection and initial and date the Building Permit (if appropriate) before leaving the project site.
- 3.5 The Consultant shall be a representative of, and shall advise and consult with the School Board during construction until a final Certificate of Completion or Certificate of Occupancy is issued. The Consultant shall have authority to act on behalf of the School Board, only to the extent provided in this Agreement, unless otherwise modified by written instrument.
- 3.6 The Consultant shall not have control over, or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, except as required by applicable codes. The Consultant shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Consultant shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

- 3.7 The Consultant shall notify the permit holder and the Building Official of work that does not conform to the applicable codes. Whenever the Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents as it pertains to code compliance, the Consultant shall recommend to the Building Official the need for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.
- 3.8 The Consultant shall review and provide written certification of code compliance, or take other appropriate action, upon School Board's agents' submittals such as Change Orders when requested by the Building Code Official, but only for the limited purpose of checking for conformance with the applicable codes. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the School Board or of separate contractors.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

ATTACHMENT B

FIXED RATE SCHEDULE

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

ATTACHMENT C

HOURLY RATE SCHEDULE

Fees for basic services and additional services (only when approved in writing by the School Board), be reimbursed at the following hourly rates:

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

ATTACHMENT D

CONSULTANT REIMBURSABLE EXPENSE GUIDELINES

A not to exceed lump sum dollar amount shall be determined during the negotiation period for the purposes hereof, the term "reimbursable expenses" shall be deemed to include the following:

1. All necessary fees paid by Consultant to governmental authorities, having jurisdiction over any Project specified in a Work Authorization, for securing required approval of the Project or any part of it.
2. Travel expenses incurred or paid by the Consultant for necessary travel by any principal or employee of Consultant outside of Osceola and Orange County, Florida, in connection with the performance of the Scope of Services. No travel or wages will be allowed from the Consultant's office to the project site or school district offices unless authorized in advance by the School Board. For the purpose of this Agreement the Consultant, including sub-consultants, agents, representatives, and employees, shall be deemed to be limited to the same extent as a school board employee, by the affirmations, laws, and regulations that govern eligibility for travel reimbursement and amount of reimbursement.
3. The direct reasonable cost to Consultant for copying, reproduction of plans and other documents required in connection with any Project specified in the Work Authorization.
4. Consultant shall obtain the prior approval of School Board before incurring any of the aforesaid reimbursable expenses, and absent such prior approval, no expenses incurred by Consultant will be deemed to be a reimbursable expense.
5. Consultant shall bear and pay all overhead and other expenses, except for the reimbursable expenses specified and defined above, incurred by Consultant in the performance of the Services.
6. Prior to authorizing Consultant to provide any Services or to incur any reimbursable expenses under a Work Authorization pursuant to this Agreement, School Board shall request that Consultant in writing advise School Board of (i) the estimated time of Consultant's personnel and the estimated fees thereof for the proposed work to be specified in the Work Authorization; and (ii) the estimated charge to School Board for the reimbursable expenses applicable to the contemplated Services to be performed by Consultant under the proposed Work Authorization. Consultant shall promptly supply such estimate to School Board based on Consultant's good faith analysis.



THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

ATTACHMENT E

WORK AUTHORIZATION FORM

This Work Authorization, dated \_\_\_\_\_, 20\_\_ , is hereby issued pursuant to that certain Continuing Contract for Building Code Inspection Services ("Agreement"), dated \_\_\_\_\_, 20\_\_, between The School Board of Osceola County, Florida "School Board") and \_\_\_\_\_("Consultant").

All terms used herein shall have the same meaning as defined in the Agreement unless otherwise noted herein. In consideration of the mutual covenants and agreements set forth below, School Board and Consultant agree as follows:

1  
SCOPE OF WORK

School Board hereby authorizes Consultant to provide the following Services for the following Project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2  
SCHEDULE

The Services under this Work Authorization shall commence by \_\_\_\_\_ and shall be completed by \_\_\_\_\_. A detailed Services schedule is attached.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3  
COMPENSATION

The compensation for the Services under this Work Authorization and the manner of payment therefore shall be as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4

QUALIFICATIONS AND SPECIAL REQUIREMENTS

The Services to be provided under this Work Authorization are subject to the following special requirements and qualifications:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5

MISCELLANEOUS

All terms and conditions of the Agreement shall remain in full force and effect unless waived or modified by an express provision of this Work Authorization.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA      CONSULTANT:

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(If required)

Attest: \_\_\_\_\_

Michael A. Grego, Ed. D  
Superintendent

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

ATTACHMENT F

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 \_\_\_\_\_, 20\_\_, 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 \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_ (affiant's signature)

STATE OF FLORIDA  
COUNTY OF OSCEOLA

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_ [name of affiant and title] of \_\_\_\_\_ [name of Consultant] 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 on this \_\_\_\_\_ day of \_\_\_\_\_, 2009

By: \_\_\_\_\_ [name of affiant].

He/she is personally known to me \_\_\_\_\_; or has produced \_\_\_\_\_ as identification .

NOTARY'S SIGNATURE AND SEAL

\_\_\_\_\_

\_\_\_\_\_  
Type or Print Name

COMMISSION SEAL/NUMBER:

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

ATTACHMENT G

KEY EMPLOYEES

Identify all personnel that will be responsible for any project authorized under the Agreement and their areas of responsibility.

NAME

TITLE

RESPONSIBILITY