

**AGREEMENT FOR PROFESSIONAL SERVICES – HVAC TEST & BALANCE FOR
THACKER AVENUE ELEMENTARY SCHOOL WING ADDITION**

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” or “School Board”), 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, and the Local Government Prompt Payment Act (Fla. Stat. secs. 218.70 – 218.80).
- D. **Reimbursable Expenses.** The Owner shall pay the T&B Firm for certain reimbursable expenses (the “Reimbursable Expenses”) as set forth on Exhibit E. 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 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. The T&B Firm 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 T & B Firm 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. 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 calendar 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 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 - Consultant shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to commencement of this Agreement. The coverage shall include broad form Commercial General Liability including premises & operations; products & completed operations; personal/advertising injury; fire damage (minimum \$100,000) and independent contractors; for limits of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate per job, per policy year, relative to this project and will include the School Board as an Additional Insured. Further, the Consultant agrees to maintain like coverage for a minimum of Five (5) years following the completion of the project.
3. Business Automobile - Consultant shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to the commencement of this Agreement. The coverage shall include the Business Automobile Liability form with coverage for symbol I (any auto) and with limits of not less than \$1,000,000 combined single limit or \$1,000,000 per person/\$1,000,000 per accident bodily injury and \$1,000,000 per accident property damage. Also, the policy will include the School Board as an Additional Insured.
4. Workers' Compensation/Employers Liability - Consultant shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to commencement of this Agreement. The coverage shall include Statutory Workers' Compensation Benefits and Employers Liability for limits of not less than \$500,000.

- 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 for professional liability and workers compensation insurance and 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 subconsultants, 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.