

CONTINUING SERVICE CONTRACT FOR APPRAISAL SERVICES

THIS CONTINUING SERVICE CONTRACT (the "Contract"), made this ____ day of _____, 2007, 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 "Consultant"), a _____, whose address is _____.

WHEREAS, School Board desires to obtain professional services consisting of APPRAISAL SERVICES;

WHEREAS, School Board has selected Consultant in accordance with the provisions of the Florida Statutes, and Consultant has agreed to provide professional services consisting of APPRAISAL 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, such services may include but are not limited to the services set forth in Exhibit A; and

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

WHEREAS, the parties desire to use the following Exhibits as part of the Contract in any work performed under this Continuing Service Contract:

- Exhibit A - Scope of Services
- Exhibit B - Project Schedule
- Exhibit C - Fee Schedule
- Exhibit D - Schedule of Progress Payments
- Exhibit E - Consultant Reimbursable Expense Guidelines
- Exhibit F - Key Employees
- Exhibit G - Form of Written Proposal and Work Authorization
- Exhibit H - Truth-In-Negotiation Certificate

WHEREAS, it is the primary intent of this Contract 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 Contract.

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 Contract.
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 Exhibit A – Scope of Services in connection with the Continuing Service Contract.
 - 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 4. 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 All Appraisal services rendered by the Consultant shall be conducted by persons properly qualified and certified and holding the MAI or SRPA membership designation of the Appraisal Institute.
 - 2.4 The Consultant's services shall be provided per the requirements of Rule 6A-2.0010, F.A.C., *Educational Facilities*, and in accordance with the Administrative Rules, Policies and Procedures of the School Board.
3. **Time of Completion**. Consultant shall commence 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 Contract. Consultant shall accelerate performance of Services in the manner directed by School Board, in the event School Board, in its sole discretion, determines that such acceleration is necessary.
4. **Fees**. School Board agrees to pay to Consultant for Services, as set forth in Exhibit A, a fee based upon an approved written proposal for the work. The fee will be a fixed fee plus reimbursable expenses or, at the School Board's option, shall be based on hourly rates plus reimbursable expenses as set forth in Exhibit C

and Exhibit E. 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 Exhibit G, and shall identify the number of hours of work by category of workers performing the service. The categories must accurately reflect the type of service to be performed, not merely the job description of the employee performing the service. No additional fee or compensation shall be payable to Consultant under this Contract for said services if the actual work by Consultant exceeds the proposal or budget.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the Planning 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 Contract 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 Contract, as identified in Exhibit E. 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 Exhibit E.
- (e) 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 Contract, 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 Contract. For the breach or violation of this provision, School Board shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (f) 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 Contract (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 Contract, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by Consultant.

(b) School Board exclusively retains all ownership rights to all materials developed under this Agreement. To the extent the Services performed under this Agreement produce or include copyrightable materials, such materials 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 Owner is the motivating factor for, and for the purpose of copyright, has the right to direct and supervise the preparation of such copyrightable materials.

7. **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 sub consultants, 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. 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 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.

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

- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
 - (f) The work product of Consultant shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from School Board and such other person.
9. **Documents and Copies.** Consultant agrees to furnish and provide to School Board the number of copies identified in Exhibit A of all reports and other documents (except correspondence) prepared by Consultant under this Contract, 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 three (3) 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 general 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. 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 representative's at all reasonable times for inspection and copying.
11. **Termination, Suspension, Disputes, or Abandonment.** Either party may terminate this Contract for failure of the other party to substantially perform this Contract. School Board shall have the absolute right and option to suspend or terminate this Contract 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 Contract 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 Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to Consultant under this Contract 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 Exhibit C or D as applicable and Exhibit E 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 Exhibit 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 Contract, and the remainder of Consultant's fees under this Contract 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 Contract and Consultant shall be entitled to time extension equal to the period of suspension.
12. **Assignability.** This Contract is for the personal services of Consultant and may not be assigned by Consultant in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Consultant, without the prior written consent of School Board, which consent School Board may withhold in its sole discretion.
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 will 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 Exhibit A, unless otherwise authorized in writing by school board. The employment of, contract 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. **Key Employees.** The Owner has relied upon and hired the Consultant because of the involvement of certain individuals employed by the Consultant who are identified on Exhibit F (the “Key Employees”). The Consultant agrees that the Key Employees shall be assigned to any projects hereunder. The Consultant shall not remove any Key Employee from any project without the prior written consent of the Owner, for any reason other than termination of the Key Employee’s employment by the Consultant.
16. **Governing Law.** Any dispute, difference, claim or counterclaim between School Board and Consultant arising out of or in connection with this Contract 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.
17. **Consultant’s Competitive Negotiation Act.**
 - (a) If the total fee paid to the Consultant 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:
 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 contract.

2. The "Truth-in-Negotiation Certificate" Exhibit H form will be furnished to Consultant by School Board upon request.
 3. The original contract amount and any additions thereto shall be adjusted to exclude any significant sums when School Board determines the contract amount was increased due to inaccurate, incomplete, or non current wage rates and other factual costs.
18. **Entire Agreement.** This Contract represents the entire and integrated agreement between School Board and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by both School Board and Consultant.
 19. **Evaluation.** Consultant will be evaluated by School Board during the Contract 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.
 20. **Exhibits.** The Exhibits, A-H, are incorporated herein by reference and shall be binding on the Consultant. In the event of any inconsistency between the Exhibits and this Contract, the provisions of this Contract shall govern and control.
 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 Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
 22. **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 Consultant:

Telecopy: ()

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

23. **Background Check.** The Consultant agrees to comply with all requirements of sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by the School Board in advance of the Consultant or its personnel providing any services under the conditions described in the previous sentence. The Consultant shall bear the cost of acquiring the background screening required by section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Consultant and its personnel. The parties agree that the failure of the Consultant to perform any of the duties described in this section shall constitute a material breach of this agreement entitling the School Board to terminate immediately with no further responsibilities or duties to perform under this agreement. The Consultant agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Consultant's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes.
24. **Access to and Retention of Documentation.** The School Board, the Federal grantor agency (if federal grant moneys used 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. The parties will retain all such required records, and records required under any state or federal rules, regulations or laws respecting audit, for a period of three years after the School

Board has made final payment and all services have been performed under this agreement.

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

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

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

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

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

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

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

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: _____
Thomas E. Chalifoux, Jr., Chairman

_____ Witness

Attest: _____
Blaine Muse, Superintendent

Date: _____

CONSULTANT:

By: _____

_____ Witness

Attest: _____

Date: _____