

## AGREEMENT FOR ARCHITECTURAL/ENGINEERING SERVICES

THIS AGREEMENT FOR ARCHITECTURAL/ENGINEERING SERVICES (the “Agreement”) is dated this [REDACTED] day of [REDACTED] by and between the School Board of Osceola County, Florida, a body corporate and public (the “Owner”), whose address is 817 Bill Beck Boulevard, Kissimmee, Florida 34744, and [REDACTED] (the “Architect/Engineer”), a Florida Corporation, whose address is [REDACTED].

WHEREAS, Owner desires to employ the Architect/Engineer to perform the services described in this Agreement in connection with [REDACTED], located [REDACTED] and Architect/Engineer desires to be employed by the Owner; and

WHEREAS, Owner and Architect/Engineer agree that Architect/Engineer will furnish, perform, and provide architectural and/or engineering 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 Architect/Engineer, 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, the General Terms and Conditions, drawings, specifications, and Addenda issued prior to execution of this Agreement, and the following exhibits:

Exhibit A- Scope of Services  
Exhibit B - Project Construction Budget  
Exhibit C - Project Schedule  
Exhibit D - Schedule of Progress Payments and Hourly Rates  
Exhibit E - Reimbursable Expenses  
Exhibit F - Key Employees  
Exhibit G - Administration of the Contract  
Exhibit H - Truth-In-Negotiation Certificate

Exhibits A-H are incorporated into this Agreement by reference and shall be binding on the Architect/Engineer. In the event of any inconsistency between this Agreement and the General Terms and Conditions or Exhibits, the provisions of the Agreement shall govern and control.

3. **Scope of Services.** The Architect/Engineer agrees to furnish and perform professional services for the Project under the terms of the Contract Documents.

- A. Basic Services. The Architect/Engineer agrees to furnish and perform professional services for the Project at a total construction cost to Owner which does not exceed the Project Construction Budget as defined in Paragraph 4. Architect/Engineer agrees to furnish and perform all of the project administration, basic services, bidding and construction award services, and construction phase services enumerated and described in the Administration of the Contract. The Architect/Engineer shall perform the Basic Services to the satisfaction of the Owner. The nature and scope of the Basic Services are specified in Exhibit A, Scope of Services.
- B. Additional Services. The Architect/Engineer agrees to furnish and perform additional services in connection with the project. The Architect/Engineer will perform Additional Services only if those services are requested by the Owner in writing.
- C. Project Design. The Project shall be designed in accordance with the following:
1. The current edition of the rules of the Florida State Board of Education, Florida Building Code, in effect at the time this Agreement is approved or at the time the work is performed, whichever is later.
  2. The Osceola County School District Educational Specifications or any educational or ancillary specifications, architectural program, design standard or project requirements developed by the Owner specifically for the Project.
  3. The provisions of the Florida Statutes, including but not limited to chapter 1013, which apply to the Project.
  4. All laws, regulations, or codes addressing site water management, water wells, environmental requirements, and sanitation.
  5. The federal requirements of the Americans with Disabilities Act.
- D. Permitting, Approvals, etc. The Architect/Engineer shall prepare, file, and coordinate the approval of all permitting actions and document reviews and approvals with all city, county, state, and federal bodies having jurisdiction and authority for the permitting, documents reviews, and approvals. The Architect/Engineer shall provide documentation to the Owner.
- E. Employees/Agents of Owner. The responsibilities of the Architect/Engineer for performing services under this Agreement and the Construction Documents is not relieved or affected in any respect whatsoever by the presence of, or inspection by, employees or agents of the Owner. The Architect/Engineer agrees that its responsibilities for approving and

certifying work for payment are not shared by any employee or agent of the Owner.

4. **Project Construction Budget.** The Architect/Engineer acknowledges that the Owner has provided a Project Construction Budget which is attached as Exhibit B. The Project Construction Budget is defined as the total budget identified for the construction of the Project. As identified in Exhibit B, the total Project Construction Budget consists of site development, building shells and interiors, site improvements, and any items of furniture and equipment that are included in the construction of the Project. The Architect/Engineer agrees that the Project Construction Budget is of the essence to this Agreement. The Architect/Engineer's work product, including without limitation, any designs, plans, and drawings, shall be designed to be constructed within the Project Construction Budget.

A. **Redesign.** If bids received on the Project are not within the Project Construction Budget, the Architect/Engineer shall perform any and all redesign work, which is reasonable and necessary to redesign the Project so that bids are received within the Project Construction Budget, as a part of its Basic Services. In the event that the redesigned work is necessitated solely by the negligent acts or omissions of the Owner, then the Architect/Engineer shall perform such redesign work as Additional Services.

B. **Cost Consultant.** Although the Architect/Engineer is responsible for developing a design which meets the Project Construction Budget, the Owner may hire a cost consultant to verify costs on the Project. The Architect/Engineer shall cooperate with the Owner's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of the Project.

The District establishes the Construction Budget in the General Scope of Work for the project. The Architect/Engineer is still responsible for designing the project within the stated Budget and Project Scope. The findings of the Cost Consultant are for comparative purposes only.

5. **Project Schedule.** The Architect/Engineer shall begin the Basic Services after both parties have executed this Agreement and the Architect/Engineer has received a written notice to proceed from the Owner. The Architect/Engineer 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 Architect/Engineer that Additional Services are requested.

- C. Acceleration. The Architect/Engineer 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 Architect/Engineer, the acceleration shall be at no cost to the Owner. If the acceleration is required as a result of delay partially caused by the Architect/Engineer, the portion of the delay not caused by the Architect/Engineer shall be treated as an Additional Service and the portion of the delay caused by the Architect/Engineer shall be treated as a Basic Service at no additional cost to the Owner.
- D. Before the Architect/Engineer submits the first invoice for professional services to the Owner, the Architect/Engineer shall prepare for the Owner's review and approval a comprehensive schedule, consistent with Exhibit C, of the performance of the Architect/Engineer's services and those of any subconsultants, separate consultants or subcontractors retained, employed or contracted by Architect/Engineer ("Architect/Engineer's Consultants"). This schedule shall indicate dates of (or, where applicable, periods of elapsed time allowed for) Owner approvals, dates when specific information is required by the Architect/Engineer from the Owner, and anticipated approval periods required for public authorities having jurisdiction over the project. Once submitted by the Architect/Engineer, the Architect/Engineer and Architect/Engineer's Consultants will be bound by that schedule and will not deviate from it without prior written authorization by the Owner. Whether or not deviations from the schedule have been authorized by the Owner, the Architect/Engineer shall update this schedule as necessary to reflect Owner-approved changes or unavoidable deviations and to indicate the probable impact of those deviations on the performance of the Architect/Engineer's services and the Project. However, nothing in this subparagraph shall be construed as a waiver of the Owner's right to obtain full compliance by the Architect/Engineer to approved schedules.
6. Ownership of Documents. All plans, drawings, specifications, sketches, models, artwork, reports, or other tangible work product produced, originally developed, or submitted to Owner by Architect/Engineer pursuant to this Agreement (the "Original Work Product") is and shall remain the sole property of the Owner.
- A. Owner's Rights. The Owner shall have the right to use any and all Original Work Product. The Architect/Engineer shall maintain a set of reproducible record prints of the Original Work Product. If subsequent usage by the Owner shall require further evidence of sealing requirements, the Architect/Engineer shall make appropriate arrangements with the Owner for this purpose pursuant to paragraph 13.
- B. Delivery of Original Work Product. The Architect/Engineer shall deliver the Original Work Product to Owner upon final completion of the Project, unless, in the Owner's sole discretion, it is necessary for the

Architect/Engineer to retain possession of the Original Work Product for a longer period of time. Upon early termination of the Architect/Engineer's services, the Architect/Engineer shall deliver all Original Work Product to the Owner, complete or incomplete, within ten (10) days of the effective date of the early termination.

7. **Changes by the Owner.** If the Owner changes any substantial aspect of the Scope of the Project which substantially changes the Project Construction Budget and/or Project Schedule, the fees and schedule contained in this Agreement may be renegotiated in good faith.
  
8. **Term.** Unless this Agreement is terminated in accordance with Paragraph 17, 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.
  
9. **Fees and Payment.**
  - A. **Contract Sum.** Owner agrees to pay Architect/Engineer a Not to Exceed Fee of **TBD 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.** Additional service will only be performed by written directive from the Owner (The School Board of Osceola County, Florida). The fees for Additional Services shall be established in accordance with the hourly rates described in Exhibit D. If any Additional Services are rendered or furnished by professional consultants retained by the Architect/Engineer and the Owner has reimbursed the Architect/Engineer for the actual reasonable amounts paid to the consultants, then the Architect/Engineer shall not be entitled to treat those services as Additional Services.
  - C. **Progress Payments.** Progress Payments shall be made on a monthly basis, in accordance with the procedures identified in Article Exhibit G.
  - D. **Reimbursable Expenses.** The Owner shall pay the Architect/Engineer for certain reimbursable expenses (the "Reimbursable Expenses") as set forth on Exhibit E. A not-to-exceed amount of **TBD Dollars (\$0.00)** has been established for this item. The Architect/Engineer 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 Architect/Engineer 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.

10. **Architect/Engineer Representations and Warranties.** The Architect/Engineer hereby represents and warrants to the Owner the following:

- A. That the Architect/Engineer has not employed or retained any company or person, other than a bona fide employee working solely for the Architect/Engineer, to solicit or secure this Agreement and that the Architect/Engineer has not paid or agreed to pay any person, company, corporation, individual, or firm other than bonafide employees working solely for the Architect/Engineer, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or execution of this Agreement. If the Architect/Engineer breaches this provision, the Owner has the right to immediately terminate this Agreement without any liability to itself and, at its sole discretion, to deduct from the Contract Sum or otherwise recover the full amount of any such fee, commission, percentage, gift, or consideration.

11. **Insurance.**

- A. **Insurance Coverages.** Architect/Engineer, shall, through the performance of its services pursuant to this Agreement, maintain and provide evidence to the Owner of the following insurance coverages:
1. **Commercial General Liability** - The Architect/Engineer 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; including the XCU hazards for limits of not less than \$1,000,000 per occurrence/\$7,000,000 aggregate per job, per policy year, relative to this project and will include the School Board as an Additional Insured. Further, the Architect/Engineer agrees to maintain like coverage for a minimum of Five (5) years following the completion of the project.

2. Business Automobile - The Architect/Engineer 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 \$500,000 per person/\$1,000,000 per accident bodily injury and \$250,000 per accident property damage. Also, the policy will include the School Board as an Additional Insured.
  3. Workers' Compensation/Employers Liability - The Architect/Engineer 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.
  4. Professional Liability - The Architect/Engineer shall, during the Term of this Agreement, provide the School Board with evidence of, including a Thirty (30) day written notice of cancellation, termination or non-renewal, insurance prior to commencement of this Agreement. The certificate shall provide Professional Liability insurance in the amounts of \$2,000,000 per claim, with an aggregate total of \$5,000,000 for the policy period. The Architect further agrees to maintain like coverage for a minimum of Five (5) years following the completion of this Agreement
- B. Form of Insurance. All insurance required under this Agreement shall be with companies that are licensed in Florida and on forms which are acceptable to the Owner. The policies shall name the Owner, the Owner's representative, and the officers, directors, agents, employees, and assigns of the Owner as additional insured (except for the professional liability and workers' compensation insurance). The coverage under all insurance required in this Agreement may not be reduced, terminated, or canceled unless thirty (30) days prior written notice is furnished to the Owner. In the event of any cancellation or reduction of insurance coverage, the Architect/Engineer shall obtain substitute coverage without any lapse of coverage.
- C. Insurer Qualifications. The insurance required under this Agreement shall be issued by companies that are licensed in Florida. The professional liability policy shall be underwritten by an insurer who, in the most current edition of Best's Key Rating Guide has a rating classification of A+, A, or A- and has a financial size category rating of Class 4 or higher.

- D. **Proof of Insurance.** The Architect/Engineer shall provide to the Owner, within ten (10) days of the date of this Agreement or prior to providing services, whichever is sooner, the following:
1. A certificate of insurance addressed to the Owner evidencing the existence of the insurance coverage required under this Agreement. The Owner must be listed as an additional insured on the certificate if required under this Agreement.
  2. The original policies evidencing the required insurance coverage, which owner shall copy and return to Architect/Engineer within seven (7) working days; and
  3. Proof which is acceptable to the Owner that the premium for the policies required under this Agreement has been paid in full by the Architect/Engineer for a period of time ending no earlier than six (6) months after the date of this Agreement.
- E. **Payment of Premiums.** The Architect/Engineer shall promptly renew and maintain in full force and effect all insurance coverages required under this Agreement. The Architect/Engineer shall pay all premiums becoming due on the insurance policies, without request or demand. The Architect/Engineer shall promptly provide proof of premium payment to the Owner.

12. **Errors and Omissions.** The Architect/Engineer is responsible for any and all additional premium costs or expenses in connection with the construction of the Project or a delay in construction of the Project which is incurred, sustained, or paid by the Owner on account of or related to the following:
- A. Negligent errors or omissions made by the Architect/Engineer in the preparation of any plans, specifications, drawings or other documents made pursuant to this Agreement; and
  - B. Any and all negligent acts or omissions by the Architect/Engineer in the performance of any other services under this Agreement.

The Architect/Engineer shall pay the additional costs and expenses to the Owner as agreed upon by the Owner.

13. **Reuse and Repeated Design.** The Owner may reuse or repeat the Project, as designed by the Architect/Engineer under this Agreement at any time or times. The Architect/Engineer shall make all plans, specifications, designs, drawings, notes, and other documents available to the Owner to facilitate the reuse of the Project design.

Owner acknowledges that the designs used by the design professional for this project were originally created by the Design Professional for previous projects and remain



the property of the Design Professional. Nevertheless, without requiring the Owner to pay additional fees, Design Professional consents to Owner’s use of the plans, specifications, designs, drawings, notes, and other documents used by Design Professional under this agreement to complete the Project following Design Professional’s termination for any reason or to perform additions to or remodeling of the Project. Additionally, Design Professional agrees to make available to Owner all plans, specifications, designs, drawings, notes, and other documents used by Design Professional under this agreement for reuse by Owner on repeat projects. For each reuse or repeat project, Owner agrees to pay Design Professional a fee according to the schedule of re-use fees below. If Owner engages Design Professional in multiple simultaneous re-use Owner agrees to pay design Professional a discounted fee per the schedule. Further, Owner and Design Professional will negotiate a fee for Design Professional to adapt plans, specifications, and other documents used in the project to any new site where the project documents are to be used. Additionally, Owner and Design Professional shall negotiate a fee for the Design Professional to provide bidding and construction phase services. Owner and Design Professional shall also negotiate a separate fee for any Owner requested changes or modifications or any revisions that are required due to building code or other regulatory changes.

Schedule of Re-use Fees:

	<b>Single Project</b>	<b>Simultaneous Multiple Projects</b>
All subsequent Re-uses-	<b>\$TBD.00</b>	<b>\$TBD.00</b>

14. **Indemnity and Hold Harmless.** The Architect/Engineer 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 Architect/Engineer to perform its services hereunder in accordance with generally accepted professional standards; any material breach of Architect/Engineer’s representations as set forth in this Agreement; or, any other failure of Architect/Engineer 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. This indemnity shall not apply if the design documents have been reused and released by another architect.

15. **Documents and Copies.** The Architect/Engineer shall provide the Owner with four (4) signed and sealed copies and one (1) set of computer files compatible with Osceola School District's programs with the number of copies of all plans, specifications, drawings, the Project Manual, and other document as specified Exhibit "G". These copies shall be made at the expense of the Architect/Engineer. If the Owner requires additional copies, the Architect/Engineer shall promptly furnish those copies to the Owner and the Owner shall pay the reasonable cost of reproduction.
16. **Expense Records.** The Architect/Engineer shall maintain its direct personnel expense records, consultant expense records, and other expense records which pertain to the Project, as well as its record of accounts between the Architect and the Owner which pertain to the Project. These records shall be kept in a generally recognized and acceptable accounting basis. The records shall be available to the Owner or its authorized representatives, during regular business hours for inspection and copying. The Architect/Engineer shall maintain accurate time records, to within the nearest one half of an hour for each time entry for all work performed by the employees of the Architect/Engineer under this Agreement.
17. **Termination, Suspension, or Abandonment.**
  - A. **Termination.** Either party may terminate this Agreement for failure of the other party to substantially perform in accordance with the requirements of the Agreement through no fault of the party initiating the termination. Further, the Owner has the absolute right to suspend or terminate this Agreement without cause for convenience at any time upon thirty (30) days prior written notice to the Architect/Engineer.
  - B. **Abandonment or Suspension.** If the Owner suspends or abandons the Project, the Owner shall pay all fees and Reimbursable Expenses which have become due and payable to the Architect/Engineer pursuant to Article VIII of the General Terms and Conditions and Exhibit D, Schedule of Progress Payments and Hourly Rates. The Architect/Engineer shall not be entitled to lost profits for uncompleted work. Payment shall be made for that portion of the work that the Architect/Engineer completed prior to the abandonment or suspension and the Owner shall have no further obligation to the Architect/Engineer for the payment for any other fees, unless the Project is resumed by the Owner.
  - C. **Resumption.** If the Owner chooses to resume the Project, the Architect/Engineer shall complete its services under this Agreement and it shall be entitled to payment of any remaining unpaid fees in accordance with the General Terms and Conditions. When it receives a notice from the Owner that the suspension has been canceled, the Architect/Engineer shall perform all services remaining under this Agreement and it shall be entitled to an extension of time equal to the period of the suspension. If the Project is

resumed within 365 days of the date it was abandoned or suspended, the fees payable to the Architect/Engineer shall be equal to the amounts due under this Agreement which had not been paid by the Owner to the Architect/Engineer. If the Project is resumed more than 365 days after the date of its abandonment or suspension, then the amounts due to the Architect/Engineer shall be equal to the amounts due under this Agreement which had not been paid by the Owner to the Architect/Engineer and shall be adjusted upward or downward in a direct ratio to any increase or decrease in the cost of living in the United States of America (as reflected by the Consumer Price Index kept by the U.S. Department of Labor) between the date of the abandonment or suspension of the Project and the date of the resumption of the Project.

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

18. **No Assignment.** This Agreement is for the personal services of the Architect/Engineer and it may not be assigned by the Architect/Engineer in any manner, whether by operation of law, or by any conveyance, including without limitation, transfer of stock in the Architect/Engineer firm, without the prior written consent of the Owner. The Owner may withhold its written consent in its sole discretion.
19. **Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the state of Florida. Osceola County, Florida shall be the proper place of venue for all suits to enforce this Agreement. Any legal proceedings arising out of or in connection with this Agreement shall be brought in the circuit courts of Osceola County, Florida. The parties consent to the jurisdiction of the court and to the service of process outside the state of Florida pursuant to the requirements of the court in any manner submitted to it.
20. **Dispute Resolution.** Prior to initiating any litigation related to this Agreement, the parties agree to submit the dispute to nonbinding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees and the costs incurred by such mediation.
21. **Subconsultants, Separate Consultants, or Subcontractors.** If the Architect/Engineer desires to employ subconsultants, separate consultants, or subcontractors in connection with the performance of its services under this Agreement, it agrees to comply with the following:

- A. Owner Approval. The Architect/Engineer shall submit any subconsultants, separate consultants, or subcontractors to the Owner for prior written approval. The Owner has the sole discretion to withhold its approval. The Owner shall not be liable to the Architect/Engineer in any manner whatsoever arising out of the Owner's objection to a proposed sub-consultant, separate consultant, or subcontractor.
- B. Architect/Engineer Responsibilities. The Architect/Engineer shall coordinate the work product of any sub-consultant, separate consultant, or subcontractor and shall remain fully responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Architect/Engineer or its subconsultants, separate consultants, or subcontractors. The Architect/Engineer shall review or approve designs, drawings, specifications, shop drawings, submittals, or other items produce or furnished by any sub-consultant, separate consultant, or subcontractor prior to submittal to the Owner. The Architect/Engineer shall correct or revise any errors or deficiencies it sees in documents or services provided pursuant to this Agreement and shall provide the Owner with corrected documents at the Architect/Engineer's sole cost and expense.
- C. Sub-consultant, Separate Consultant, or Subcontractor Responsibilities. Any agreements between the Architect/Engineer and a sub-consultant, separate consultant, or subcontractor for work on the Project shall reflect the terms of this Agreement. To the extent the services are to be performed by the sub-consultant, separate consultant, or subcontractor, that third party shall assume the obligations of the Architect/Engineer towards the Owner. The Architect/Engineer acknowledges that this does not relieve the Architect/Engineer from any of its duties under this Agreement.
22. Owner Consultants. The Architect/Engineer shall cooperate at all times with the Owner and shall cooperate and coordinate with any separate consultant or agent hired by the Owner. The Architect/Engineer shall incorporate the work product of any Owner consultant in a manner which is appropriate to facilitate the design and construction of the Project within the Project Construction Budget and Project Schedule.
23. Key Employees. The Owner has relied upon and hired the Architect/Engineer because of the involvement of certain individuals employed by the Architect/Engineer who are identified on Exhibit F (the "Key Employees"). The Architect/Engineer agrees that the Key Employees shall be assigned to the Project. The Architect/Engineer shall not remove any Key Employee from the Project without the prior written consent of the Owner, for any reason other than termination of the Key Employee's employment by the Architect/Engineer.
24. Consultants' Competitive Negotiation Act. If the total fee paid to the Architect/Engineer exceeds the threshold amount provided in Section 287.017, for

CATEGORY FOUR the following provisions of the Consultants' Competitive Negotiation Act, section 287.055(5) (a), Florida Statutes apply:

- A. The Architect/Engineer shall execute and furnish to the Owner a "Truth-in-Negotiation Certificate," stating the wage rates and other factual unit costs supporting compensation are accurate, complete, and current at the time of executing this Agreement.
  - B. The "Truth-in-Negotiation Certificate" form is attached to this Agreement as Exhibit H.
  - C. The Contract Sum and any additions thereto shall be adjusted to exclude any significant sums when the Owner determines the Contract Sum was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.
25. **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.
26. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters covered by this Agreement. All prior negotiations, representations, and agreements not incorporated in this Agreement are canceled. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representatives.
27. **Right to Enter this Agreement.** Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement, shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performance of its obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full right and authority to enter into this Agreement and to perform its obligations under this Agreement. Upon written request, each party agrees to supply the other parties with evidence of its full right and authority.
28. **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.
29. **Notices.** All notices shall be in writing, and all payments shall be by check, 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, or (b) by delivering the same in person to such party, (i) personal delivery, or (ii) overnight courier. 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:                      Facilities and Maintenance Department  
School Board of Osceola County, Florida  
809 Bill Beck Boulevard  
Kissimmee, FL 34744  
Telephone:                                      (407) 518-2964  
Telecopy:                                        (407) 518-2985  
Attention:                                        Eric Shawn Houston

If to Architect/Engineer:                **TBD**  
  
Telephone:                                        **(000)**  
Telecopy:                                         **(000)**  
Attention:

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.

- 30. **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.
- 31. **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.
- 32. **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.

33. **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.
34. **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.
35. **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.
36. **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 Architect/Engineer or any other party, or cause either party to be responsible in any way for the debts and obligations of the other party.
37. **Third Party Beneficiaries.** This Agreement has been made and entered into for the sole protection and benefit of the School Board and Architect/Engineer, and their respective successors, and no other person or entity shall have any right or action under this Agreement.
38. **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.
39. **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, Architect/Engineer 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 issuance of RFQ #SDOC-0\_\_- 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 contract 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 issuance of RFQ #SDOC-0\_\_- had one or more public transactions (federal, state or local) terminated for cause or default.

Architect/Engineer 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 (a) – (b) above, with respect to Contractor or its principals.

40. **Background Check.** The Architect/Engineer 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 Architect/Engineer or its personnel providing any services under the conditions described in the previous sentence. The Architect/Engineer 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 Architect/Engineer and its personnel. The parties agree that the failure of the Architect/Engineer 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 Architect/Engineer 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 Architect/Engineer's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes. Architect/Engineer shall require each of Architect/Engineer's Consultants on the project to agree, in writing, to the provisions of this paragraph.



41. **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.
42. **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.
43. **Access to Documentation.** Architect/Engineer 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 the Project. 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 Architect/Engineer 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 44 below, Architect/Engineer shall make its records available during normal business hours to the School Board or any of the entities mentioned in the first sentence of this paragraph. Such entities shall be entitled to inspect, examine, review and copy the records within adequate work space at the Architect/Engineer's facilities. Without limitation and not in derogation of any other provision of law, failure of Architect/Engineer to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by School Board to Architect/Engineer pursuant to this Agreement.
44. **Retention of Documentation.** Architect/Engineer shall retain all such records as described in paragraph 43 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.
45. **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, Architect/Engineer 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.

**Attest:** **TBD**

\_\_\_\_\_ By: \_\_\_\_\_  
(Name, Title and Corporate Seal)

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

**Attest:** **The School Board of Osceola County, Florida**

\_\_\_\_\_ By: \_\_\_\_\_  
Blaine Muse, Superintendent John McKay, Chairman

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

**EXHIBIT A**

**SCOPE OF SERVICE**

**TBD**

**SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA**

**EXHIBIT B**

**PROJECT CONSTRUCTION BUDGET**

<b><u>COST CATEGORY</u></b>	<b><u>BUDGET</u></b>
<b>A. Construction CSI Divisions 1-17</b>	<b>\$TBD.00</b>

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

**EXHIBIT C**

**PROJECT SCHEDULE**

1. Construction Documents Complete: TBD
2. Bidding Phase: 30 Calendar Days after Construction Documents are Complete
3. Construction Phase: TBD months
4. Close-out: 60 calendar days
5. Warranty: 12 months

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

**EXHIBIT D**

**SCHEDULE OF PROGRESS PAYMENTS**

**TBD**

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

**EXHIBIT E**

**ARCHITECT/ENGINEER REIMBURSABLE EXPENSE GUIDELINES**

Reimbursable expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees. The reimbursable dollar amount above is a not to exceed lump sum dollar allowance of \$TBD to cover printing costs, permitting, construction investigations, other costs associated wit the administering the projects, and for any additional owner requested design modifications not covered in the Scope of Services.

**TRAVEL**

All expenses related to travel, including without limitation train, mileage, air, etc., shall be subject to all laws, policies, and guidelines for the State of Florida and the School Board in connection with eligibility for reimbursement and limitations for dollar amount for such reimbursement. For the purpose of this Agreement the ARCHITECT/ENGINEER, including consultants, agents, etc., shall be deemed to be limited to the same extent as a school board employee, by the affirmations, laws, regulations, that govern eligibility for travel reimbursement and amount of reimbursement.



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

**EXHIBIT F**

**KEY EMPLOYEES**

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

**Member**

**Title**

**Responsibility**

# THE SCHOOL DISTRICT OF OSCEOLA COUNTY

## EXHIBIT G

### ADMINISTRATION OF THE CONTRACT

#### 1 ARCHITECT/ENGINEER

**1.1** The ARCHITECT/ENGINEER is the person lawfully licensed to practice ARCHITECTURE/ENGINEERING or an entity lawfully practicing ARCHITECTURE/ENGINEERING identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "ARCHITECT/ENGINEER" means the ARCHITECT/ENGINEER or the ARCHITECT/ENGINEER'S authorized representative.

**1.2** In case of termination of employment of the ARCHITECT/ENGINEER, the Owner shall appoint an ARCHITECT/ENGINEER against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former ARCHITECT/ENGINEER.

#### 2 ARCHITECT/ENGINEER ADMINISTRATION OF THE CONTRACT

**2.1** The ARCHITECT/ENGINEER will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period. The ARCHITECT/ENGINEER will advise and consult with the Owner. The ARCHITECT/ENGINEER will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents unless otherwise modified by written instrument in accordance with other provisions of the Contract.

**2.2** The ARCHITECT/ENGINEER will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the ARCHITECT/ENGINEER will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on site observations as an ARCHITECT/ENGINEER, the ARCHITECT/ENGINEER will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**2.3** The ARCHITECT/ENGINEER will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The ARCHITECT/ENGINEER will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The ARCHITECT/ENGINEER will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**2.4 Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the ARCHITECT/ENGINEER. Communications by and with the ARCHITECT/ENGINEER'S consultants shall be through the ARCHITECT/ENGINEER. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**2.5** Based on the ARCHITECT/ENGINEER'S observations and evaluations of the Contractor's Applications for Payment, the ARCHITECT/ENGINEER will review and certify the amounts due the Contractor and will issue

Certificates for Payment in such amounts.

**2.6** The ARCHITECT/ENGINEER will have authority to reject Work which does not conform to the Contract Documents. Whenever the ARCHITECT/ENGINEER considers it necessary or advisable for implementation of the intent of the Contract Documents, the ARCHITECT/ENGINEER will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the ARCHITECT/ENGINEER 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 ARCHITECT/ENGINEER to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

**2.7** The ARCHITECT/ENGINEER will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The ARCHITECT/ENGINEER'S action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the ARCHITECT/ENGINEER'S professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The ARCHITECT/ENGINEER'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the ARCHITECT/ENGINEER, of any construction means methods, techniques, sequences or procedures. The ARCHITECT/ENGINEER'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**2.8** The ARCHITECT/ENGINEER will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work.

**2.9** The ARCHITECT/ENGINEER will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

**2.10** If the Owner and ARCHITECT/ENGINEER agree, the ARCHITECT/ENGINEER will provide one or more project representatives to assist in carrying out the ARCHITECT/ENGINEER'S responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. If no such exhibit has been so incorporated, the duties, responsibilities and limitations of authority of such Project Representative shall be as set forth in the edition of AIA Document B352 current as of date of the Agreement.

**2.11** The ARCHITECT/ENGINEER will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The ARCHITECT/ENGINEER'S response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the ARCHITECT/ENGINEER shall be furnished in compliance with this Paragraph 2, then delay shall not be recognized on account of failure by the ARCHITECT/ENGINEER to furnish such interpretations until 15 days after written request is made for them.

**2.12** Interpretations and decisions of the ARCHITECT/ENGINEER will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the ARCHITECT/ENGINEER will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith

**2.13** The ARCHITECT/ENGINEER'S decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

### **3 CLAIMS AND DISPUTES**

**3.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**3.2** Claims arising prior to final payment or the earlier termination of the Contract shall be referred initially to the ARCHITECT/ENGINEER for action as provided in Paragraph 4

**3.3 Time Limits on Claims.** Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. Any change or addition to a previously made Claim shall be made by written notice in accordance with this subparagraph 3.3.

**3.4 Continuing Contract Performance.** Pending final resolution of a Claim including litigation, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents

**3.5 Waiver of Claims: Final Payment.** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**3.6 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The ARCHITECT/ENGINEER will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the ARCHITECT/ENGINEER determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the ARCHITECT/ENGINEER shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the ARCHITECT/ENGINEER has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the ARCHITECT/ENGINEER for initial determination, subject to further proceedings pursuant to Paragraph 4.

**3.7 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the ARCHITECT/ENGINEER, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the ARCHITECT/ENGINEER, (4) failure of

payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

### **3.8 Claims for Additional Time**

**3.8.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish the ARCHITECT/ENGINEER with such documents relating thereto as the ARCHITECT/ENGINEER may reasonably require. In the case of a continuing delay only one Claim is necessary.

**3.8.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**3.9 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 3.7 or 3.8.

## **4 REVIEW OF CLAIMS BY ARCHITECT/ENGINEER**

**4.1** The ARCHITECT/ENGINEER shall review Claims and may (1) defer any action with respect to all or any part of a Claim and request additional information from either party; (2) decline to render a decision for any reason which he deems appropriate (including but not limited to the fact that the Claim involves allegations of fault on the part of the ARCHITECT/ENGINEER; or (3) render a decision on all or a part of the Claim within ten (10) days from the date of the Claim. The ARCHITECT/ENGINEER shall notify the parties in writing of his disposition of such Claim. If the ARCHITECT/ENGINEER renders a decision or declines to render a decision, either party may proceed in accordance with Paragraph 5. If the ARCHITECT/ENGINEER decides that the Work relating to such Claim should proceed regardless of his disposition of such Claim, the ARCHITECT/ENGINEER shall issue to the Contractor a written order to proceed.

**4.2** If a Claim has been resolved, the ARCHITECT/ENGINEER will prepare or obtain appropriate documentation.

**4.3** If a Claim has not been resolved, the party making the Claim shall, within ten days after the ARCHITECT/ENGINEER's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the ARCHITECT/ENGINEER, (2) modify the initial Claim or (3) notify the ARCHITECT/ENGINEER that the initial Claim stands.

**4.4** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the ARCHITECT/ENGINEER, the ARCHITECT/ENGINEER will notify the parties in writing that the ARCHITECT/ENGINEER's decision will be made within seven days, which decision shall be final and binding on the parties but subject to litigation. Upon expiration of such time period, the ARCHITECT/ENGINEER will render to the parties the ARCHITECT/ENGINEER's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the ARCHITECT/ENGINEER may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## **5 LITIGATION**

**5.1** Either party may pursue any Claim against the other in any court having jurisdiction, provided the party has first complied with the provisions of Paragraph 3 and 4 with respect to such Claim. The word “litigation” shall be deemed to replace the word “arbitration” wherever the latter word appears in the Contract Document.

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

**EXHIBIT H**

**TRUTH IN NEGOTIATION CERTIFICATE**

The wage rates and other factual unit costs supporting the compensation under the Agreement between the School Board of Osceola County, Florida and \_\_\_\_\_ dated \_\_\_\_\_

are accurate, complete and current as of the time of entering into the contract. This Certificate is executed in Compliance with Section 287.055 (5) (a) of the Florida Statutes.

DATED this \_\_\_\_ day of \_\_\_\_\_ 2008.

By:

STATE OF FLORIDA  
COUNTY OF

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

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

Notary Public (printed name)

Personally known to me \_\_\_\_\_; or has produced identification

Type of identification produced:

\_\_\_\_\_