

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

BOARD AGENDA ITEM – December 14, 2021

DEPARTMENT/SCHOOL INITIATED AGREEMENT

22-303-BW-CC Marine Lab Field Trips

<input checked="" type="checkbox"/> (BW) Bids Waived	<input type="checkbox"/> (A) Agreement
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REQUESTOR: Elementary/Secondary Leading & Learning **Legal Review Required:** Yes No
Standard Template Used with No Changes: Yes No
Standard Template Type: Contractor Agreement Addendum

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
Marine Resources Development Foundation d/b/a Marine Lab	Variable	Marine Science Education Field Trip
Total	Variable	

<input type="checkbox"/> Contract Renewal	New Contract Amount	Variable
<input type="checkbox"/> Recurring Contract	Previous Contract Amount	N/A
<input checked="" type="checkbox"/> New Contract	Variance	N/A

PRICE INCREASE / DECREASE EXPLANATION: N/A

DISCUSSION:

Marine Lab provides marine science field trips for elementary, middle, and high school student groups. Students participate in introductory discussions on marine biology, using hands-on lab activities. The curriculum consists of seagrass, mangrove, and coral reef ecology field trips. Each program includes a visit to these three bottom communities. Evening discussions on coral reef ecology, field identification of reef fish, invertebrate diversity, and plankton are also part of the core activities. Students will gain an understanding of marine biology and the biodiversity of the Florida Keys ecosystem.

The Contractor Agreement Addendum template has been used, which does not require Legal review.

CONTRACT TERM:

The initial contract term shall commence December 15, 2021 and continue until June 30, 2024.

RECOMMENDATION:

It is the recommendation of Dr. Stephanie Soliven, Asst. Superintendent of Secondary Office of Leading & Learning, and Jane Cline, Asst. Superintendent of Elementary Office of Leading and Learning to approve the attached agreement with Marine Resources Development Foundation d/b/a Marine Lab. Each individual trip will have an accompanying agreement that will be approved by the appropriate Cabinet member.

AUTHORITY FOR ACTION:

Florida Administrative Code 6A-1.012 (11)(b)



CONTRACTOR AGREEMENT ADDENDUM

THIS ADDENDUM ("Addendum") is entered into by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as "BPS") and Marine Resources Development Foundation dba Marine Lab, whose business address is PO Box 370787 51 Shoreland Drive, Key Largo FL 33037 (hereinafter referred to as "Contractor"), and is intended to supplement the agreement which has been assigned contract number 22-303-BW-CC by BPS for tracking purposes;

1. **TERM** – The term of this Addendum will cover the period beginning December 15, 2021 through June 30, 2024 for the entire District.
2. **DEFINITION OF "AGREEMENT" AND CONFLICT** - As used herein, the term "agreement" shall mean Contractor's standard form contracts and/or terms and conditions, any and all exhibits and attachments thereto, and any additional terms and conditions incorporated or referenced therein. Contractor's standard terms and conditions in the agreement, and any additional terms and conditions incorporated or referenced therein, are, with the exceptions noted herein, acceptable to BPS. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Contractor's agreement cannot be accepted by BPS, and in consideration of the convenience of using those standard agreements without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's agreement, the following provisions as set forth in this Addendum shall control in the event of a conflict and they are specific to The School Board of Brevard County, Florida as a local educational agency.
3. **DISPUTES** - Any references in the agreement to arbitration are hereby deleted. Jurisdiction resides in the Circuit Court in Brevard County, Florida, the local educational agency's county. Agreements to engage in nonbinding mediation are permissible.
4. **HOLD HARMLESS** - Any clause requiring the BPS to indemnify or hold harmless any party is hereby deleted in its entirety. In addition, nothing in the agreement shall be deemed to be a waiver of the BPS's rights, privileges, and immunities as set forth in Section 768.28, F.S.
5. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of Florida. This provision replaces any references to any other State's governing law.
6. **TAXES** - Provisions in the agreement requiring BPS to pay taxes are deleted. As a political subdivision of the State of Florida, BPS is generally exempt from Federal, State, and local taxes and will not pay taxes for any Contractor including individuals, nor will BPS file any tax returns or reports on behalf of Contractor or any other party.
7. **PAYMENT** - Any references to prepayment are deleted. For purposes of this section, prepayment shall not include deposits to hold event dates open or payments utilizing funds collected by a school from parents/guardians for participation in an optional event. In accordance with the Local Government Prompt Payment Act, found in Section 218.70, F.S., payment by BPS shall be made within forty-five (45) days of receipt of an invoice from Contractor.
8. **INTEREST** – Any provision for interest or charges on late payments is deleted. BPS has no statutory authority to pay interest or late fees.
9. **NO WAIVER** - Any language in the agreement requiring BPS to waive any rights, claims, or defenses is hereby deleted.

10. **FISCAL YEAR FUNDING** - Services performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Florida Legislature or otherwise being available for these Services. In the event funds are not appropriated or otherwise available for these Services, the agreement shall terminate without penalty at the end of BPS's fiscal year on June 30. After that date, the agreement becomes of no effect and is null and void. However, BPS agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

11. **STATUTE OF LIMITATION** - Any clauses in the agreement limiting the time in which BPS may bring suit against Contractor, lessor, individual, or any other party are deleted.

12. **SIMILAR SERVICES** - Any provisions in the agreement limiting BPS's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.

13. **ATTORNEY FEES** - BPS recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision regarding attorney fees in the agreement is invalid and considered null and void.

14. **ASSIGNMENT** - Notwithstanding any clause to the contrary in the agreement, Contractor shall obtain the written consent of BPS prior to assigning the agreement.

15. **LIMITATION OF LIABILITY –BPS**, as a political subdivision of the State of Florida, cannot agree to assume the potential liability of a Contractor. Accordingly, any provision in the agreement limiting the Contractor's liability for direct damages is hereby deleted. Limitations on special, incidental, or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

16. **RIGHT TO TERMINATE** –BPS shall have the right to terminate the agreement upon thirty (30) days' written notice to Contractor. BPS agrees to pay Contractor for services received prior to the effective date of termination.

17. **TERMINATION CHARGES** - Any provision requiring BPS to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. BPS may only agree to reimburse Contractor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by BPS prior to the end of any current agreement term.

18. **RENEWAL** - Any reference to automatic renewals are hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

19. **INSURANCE** - Any provision requiring BPS to purchase insurance for Contractor's property is deleted. BPS is self-insured and will provide a certificate of property insurance upon request. Contractor, if coming onto property owned or operated by BPS, shall maintain the following types of insurance at its sole expense:

a. Workers' Compensation insurance in statutory amounts and Employer's Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all Contractor's employees who will be engaged in the performance of the Services under the agreement.

b. Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

c. Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in the agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

d. Professional Liability insurance for any and all claims as a result of an action, lack of action, error or omission by Contractor, its employees, or subcontractors in an amount not less than One Million Dollars (\$1,000,000) each claim.

If such policy is written on a "claims-made" basis, coverage shall remain in effect for three (3) years after the expiration or termination of the agreement and any of its extensions.

20. **RIGHT TO NOTICE** - Any provision in the agreement for repossession of equipment without notice is hereby deleted. However, the BPS does recognize a right of repossession with notice.

21. **ACCELERATION** – Any reference in the agreement to acceleration of payments in the event of default or non-funding is hereby deleted.

22. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. BPS contracts are public records under the Florida Public Records Laws and subject to disclosure upon request unless otherwise made confidential or exempt under the F.S.

23. **FERPA** – To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, F.S. (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

24. **INDEMNIFICATION**

a. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys' fees at the pre-trial, trial, and appellate levels, arising out of, resulting from, or incidental to CONTRACTOR's performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR's available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS's sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of "solely negligent" should arise, a court agreeable to both Parties may be engaged to settle this dispute.

b. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS's sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS's rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

25. **PUBLIC RECORDS – EFFECTIVE JULY 1, 2016 IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 321-633-1000 ext. 11453. RECORDSREQUEST@BREVARDSCHOOLS.ORG. THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940.**

a. The agreement and this Addendum are subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

b. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

c. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.

d. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of the agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of the agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of the agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this section. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

26. **AMENDMENTS** - All amendments, modifications, alterations, or changes to the agreement or this Addendum shall be in writing and signed by both parties. No future amendment, modification, alteration, or change may be made to the agreement or this Addendum without the express written consent of the parties.

27. **INCORPORATION BY REFERENCE** – In addition to Contractor's agreement, a copy of Contractor's standard terms and conditions as they appear on the date of execution of this Addendum are attached hereto and incorporated herein as Exhibit "A."

28. **E-Verify**. Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, BPS has made and executed this Addendum and Contractor has made and executed this Addendum on the day and year below written.

MARINE LAB

By:  Date: 11/3/2021
Authorized Representative's name

Print Name: Gionette Hughes

Title: CEO

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

Board:

By: _____ Date: _____
Misty Belford, Board Chairperson

EXHIBIT "A"
CONTRACTOR'S STANDARD TERMS AND CONDITIONS ATTACHED (Varies per school)

MARINELAB SNORKELING PROGRAM DEPOSIT CONTRACT

PLEASE COMPLETE THE FOLLOWING CONTACT INFORMATION

School contact name: _____
Cell phone number: _____ School phone number _____
Email address: _____

Is this also the lead chaperone attending your program? _____ YES _____ NO
If NO, please list the name of the onsite lead chaperone: _____
Onsite chaperone cell phone: _____

I, _____ of _____, hereby enclose a NON-REFUNDABLE DEPOSIT in the amount of \$ _____ for _____ boats for our MarineLab program from _____ to _____, arriving at _____ and departing at _____.

STUDENT NUMBERS: At this time, I expect _____ STUDENTS to attend. I understand that in order to reserve the number of boats necessary to accommodate my group, we are required to send a deposit in the amount of \$ _____. The total program fee includes that deposit plus the **balance payment** for each paying participant that actually attends, with a minimum of 7 full paying participants per boat. Please contact MarineLab if your numbers change!

NON REFUNDABLE DEPOSITS: I understand, and have made it clear to my students and parents, that this deposit is NON REFUNDABLE. If the student or parent should cancel at a later date, their deposit is not refundable to them or to the school or sponsoring group and cannot be allocated to the balance for the rest of the group. They can be replaced by another student or paying adult.

I understand that in the event we cancel the program after depositing, this deposit is entirely NON REFUNDABLE and not transferable to future programs EXCEPT WHEN THE CAUSE IS CONCERN ABOUT COVID-19.

Any changes to the program fee as a result of itinerary or option choices jointly agreed to by the person named above and MarineLab will be reflected in the **balance payment** due for the program.

I have read and understand the policies governing INDIVIDUAL STUDENT CANCELLATIONS and will call or email MarineLab whenever my numbers change.

CHAPERONES: At this time, I anticipate that _____ CHAPERONES will be attending. I have read and understand the following chaperone policies:

1. MarineLab requires ONE chaperone per boat, who attends free of charge;
2. One additional chaperone PER GROUP not per boat may attend at a reduced fee to cover room and board charges;
3. All other chaperones pay FULL PRICE and are subject to the same non refundable deposit and cancellation policies as students;
4. Adults may take the place of students and use those deposits toward their full fee, subject to our Parent Chaperone Policy.

I understand that MarineLab reserves the right to change sequence and content of our field trip presentations due to weather and group size considerations, and that MarineLab reserves the right to put my group on a smaller number of boats should the group size warrant it.

Signature

Title

Date

Please print name, if different from above: _____