

INTERLOCAL AGREEMENT

SCHOOL ACCESS AND SITE IMPROVEMENTS

THIS INTERLOCAL AGREEMENT, hereinafter referred to as the "Agreement", is made and entered into by and between the School Board of Brevard County, Florida, the governing body of the School District of Brevard County, Florida, hereinafter referred to as the "SCHOOL BOARD", and Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY".

WITNESSETH:

WHEREAS, the SCHOOL BOARD desires to make minor access and site improvements at schools within the COUNTY; and

WHEREAS, the COUNTY can cost effectively mobilize internal and contractor resources for minor civil construction projects on or in support of the SCHOOL BOARD's sites; and

WHEREAS, the SCHOOL BOARD desires to non-exclusively contract with the COUNTY to provide minor civil construction services on the SCHOOL BOARD's sites as needed; and

WHEREAS, the public benefit is a cost-effective use of public funds.

NOW, THEREFORE, the COUNTY and the SCHOOL BOARD covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

- 1) Recitals: The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.
- 2) Statutory Authority: This Agreement shall be considered an Interlocal Agreement pursuant to the authority of Chapter 163, Part I Florida Statutes.
- 3) Scope: At the request of the SCHOOL BOARD, the COUNTY may at its sole discretion provide construction services for minor civil projects, including, but not limited to, signing, paving, drainage, striping and concrete work. Such projects may not exceed the then-current threshold amount set forth in Section 255.20, Florida Statutes. If the construction estimate exceeds such threshold amount, or other limitation imposed by law or regulation, then the SCHOOL BOARD must competitively award the project in accordance with such applicable law or regulation. The SCHOOL BOARD is responsible for following all procurement requirements established by Florida law, including, but not limited to, having a

public hearing prior to award, when applicable.

- 4) Task Orders: Work will be requested and defined by the SCHOOL BOARD in a Task Order in a form similar to the one attached hereto as Exhibit A. The Superintendent, or designee, has the authority to sign Task Orders on behalf of the SCHOOL BOARD.
- 5) Cost Estimate: The COUNTY will provide a cost estimate to the SCHOOL BOARD to include material, labor, equipment and any subcontractor costs based on each Task Order. The project duration will be set for each project based on mutual agreement between the COUNTY and SCHOOL BOARD.
- 6) Purchase Orders and Change Orders: The SCHOOL BOARD will issue a Purchase Order to the COUNTY for the agreed-upon scope and cost for each Task Order. The Superintendent, or designee, and the Public Works Director, on behalf of the COUNTY, shall have the authority to execute Purchase Orders, Change Orders, and other necessary contract-related documents, and to bind their respective party.

Change Orders may be requested by the COUNTY in the case of circumstances outlined in Section 25 herein. Approval of such Change Orders shall not be unreasonably withheld by the SCHOOL BOARD. The parties further understand that the costs, scope, and/or applicable timelines associated with a respective purchase order may be altered or modified, upon written agreement between parties, based on a change of costs or circumstances. The SCHOOL BOARD shall fund 100% of construction change order costs. The parties agree to negotiate in good faith to complete the work requested. In the event an agreement cannot be reached in order to complete a particular project, said purchase order may be cancelled, rejected, or otherwise terminated by the COUNTY without penalty. The COUNTY shall be paid for whatever work has been completed up to the date of cancellation or termination.

If a Change Order becomes necessary, the COUNTY will advise the SCHOOL BOARD within seven (7) business days of receiving such information.

- 7) Notices: All notices required under this Agreement shall be in writing and delivered to the parties by United States mail or by electronic mail, as follows:

- a. SCHOOL BOARD Representative

Susan Hann, P.E.
Assistant Superintendent Facilities Services
Brevard Public Schools - Facilities Services
2700 Judge Fran Jamieson Way
Viera, Florida 32940

Hann.Susan@Brevardschools.org

b. COUNTY Representative

Tammy Thomas-Wood
Support Services Manager
Brevard County Public Works Department
2725 Judge Fran Jamieson Way, Room A-201
Viera, Florida 32940
Tammy.thomas-wood@brevardfl.gov

If notice is sent by mail then such notice shall be considered received three (3) days after being sent.

- 8) Default: Either party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.
- 9) Severability: If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.
- 10) Effective Date: Pursuant to Chapter 163, Florida Statutes, it will be a condition precedent to the effectiveness of this Agreement that it is recorded with the Clerk of the Circuit Court in and for Brevard County, Florida. The costs of such recording shall be borne by the COUNTY. As such, upon full execution of the Agreement, the COUNTY shall record a fully executed original of this Agreement in the public records of Brevard County, Florida, and shall return a recorded Agreement to the SCHOOL BOARD representative identified in Section 7. Notices.
- 11) Term and Termination Clause: The term of this Agreement shall be effective upon the date of last signature below and shall continue for one (1) year from the effective date. The parties agree that this Agreement shall automatically renew every year unless otherwise terminated in accordance with this Agreement.

The COUNTY or the SCHOOL BOARD shall have the right to terminate this Agreement, with or without cause, by furnishing thirty (30) days prior written notice as provided in Paragraph (7). However, Paragraph (6) of this Agreement shall survive the aforesaid termination of this Agreement and shall be adhered to in so far as the COUNTY will be compensated for any portion of construction services that have been completed through this Agreement prior to any termination.

- 12) Attorney's Fees: In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs. This provision shall not be interpreted to be a pledge of ad valorem tax revenues.
- 13) Public Records: This Agreement is subject to and governed by the laws of the State of Florida, including, without limitation, Chapter 119, Florida Statutes, which generally makes public all records or other writings made by or received by the parties. Both parties acknowledge their legal obligation to comply with Chapter 119, Florida Statutes. Both parties 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 under this Agreement for at least five (5) years after the termination of this Agreement or as otherwise required by law, whichever is longer. The parties shall comply with all requirements for retaining public records and the COUNTY shall transfer, at no cost to the SCHOOL BOARD, all public records in the possession of the COUNTY upon a request for such public records.
- 14) E-Verify: Under Executive Order 11-116, and Section 448.095, Florida Statutes, effective July 1, 2020, the parties 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. The COUNTY 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. Evidence of compliance with Section 448.095, Florida Statutes, shall be provided upon request. Evidence may consist of, but is not limited to, providing the party's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and the SCHOOL BOARD may choose to terminate the Agreement at its sole discretion for this purpose.
- 15) Venue and Non-Jury Trial: Any legal action to enforce, interpret, or construe the terms of this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida, and **ANY TRIAL SHALL BE A NON-JURY TRIAL**.
- 16) Compliance with Statutes; Governing Law: It shall be each party's responsibility to be aware of and comply with all federal, state, and local laws.

This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted, and construed according to the laws of the State of Florida.

- 17) Indemnification: To the extent allowed by law and subject to the provisions set forth in Section 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents, or other

representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages, or injuries caused by or otherwise arising from the negligent or wrongful acts and/or omissions of its employees, agents, or representatives. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

- 18) Insurance: The parties warrant that they are self-insured and agree to maintain general liability insurance as required by law. The parties further agree to provide each other with a copy of said insurance certificates.
- 19) Non-Discrimination: The parties shall not unlawfully discriminate against any individual on the basis of his or her race, age, religion, ancestry, color, ethnicity, gender, national origin, marital status, familial status, disability, sexual orientation, genetic information, or gender identity or expression with respect to any activity occurring or under this Agreement.
- 20) Waiver: No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement shall impair any such right, power or privilege or be construed as a waiver or acquiescence thereto; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver shall be valid against any party, unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
- 21) Relationship of the Parties: The parties hereto acknowledge that their relationship is that of independent contractors. No employee of either party shall be deemed an employee of the other party. Nothing contained herein shall be construed to create a partnership or joint venture between the parties.
- 22) No Third-Party Beneficiaries: This Agreement and the provisions hereof are for the exclusive benefit of the parties hereto and their affiliates and not for the benefit of any third person, nor shall this Agreement be deemed to confer or have conferred any rights, express or implied, upon any other third person.
- 23) Entirety: This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no modification to this Agreement unless such amendment is in writing and signed by both parties.
- 24) Counterparts: This Agreement may be executed in counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to

constitute one (1) original document.

- 25) Force Majeure: Neither party shall be liable for its failure to perform hereunder if its performance is rendered impossible or delayed by any unforeseen act, event, or condition beyond its reasonable control. Such unforeseen acts, events, or conditions include, but are not limited to, the following: Acts of God, hurricanes, tornados, lightning, or earthquakes; strikes or lockouts; acts of war, civil insurrection, riots, or terrorism; fire or flood not caused by the party unable to perform; change in law not due to improper conduct; pandemics or quarantines; or, any negligent or intentional act or omission on the part of the party seeking performance that impacts the other party's ability to perform.
- 26) Ownership and Maintenance: The parties agree that after construction of a project, the SCHOOL BOARD shall own and be solely responsible for the maintenance of all project improvements, unless specifically stated otherwise under separate agreement.
- 27) Warranty: The COUNTY shall: (a) conform to the requirements of any Purchase Order; (b) perform the necessary work in a good and competent manner in accordance with professional industry standards (with the level of skill, knowledge, and judgment required or reasonably expected of providers of comparable services); and, (c) ensure the services are provided free from defects. THE COUNTY MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, BY FACT OR LAW, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THE COUNTY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTY CONCERNING WHETHER WORK COMPLETED IS FIT FOR ANY PARTICULAR PURPOSE, USE OR OPERATION.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date last written below.

ATTEST:

SCHOOL BOARD

Mark W. Mullins, Ed.D
Superintendent

Misty Belford, Chair

As approved by the Board on: _____

APPROVED AS TO FORM:

School Board General Counsel

ATTEST:

BREVARD COUNTY, FLORIDA

Rachel Sadoff, Clerk

Rita Pritchett, Chair

Date: _____

As approved by the Board on: July 20, 2021

APPROVED AS TO FORM FOR
BREVARD COUNTY, FLORIDA:

Assistant County Attorney

**Exhibit A
Sample Task Order**

School:
Principal Contact:

Scope of Work:
(Attach Design Plans and Permits)

Cost:

Purchase Order Number:

Schedule:

Special Notes:

BPS Contact:

Brevard County Contact:

Approved by:
Brevard Public Schools
Date _____

Accepted by:
Brevard County
Date _____