

- C. **Addenda:** Refer to attached applicable RFP addenda listing.
- D. **This Agreement and all of its Attachments and Exhibits**
- E. **Online Documents:** as defined herein.
- F. **Owner Approved Submittals:** As set forth in the Design Criteria Package and its attachments, the General Conditions of the Design/Build Contract, and documents submitted with the RFP are as fully a part of the Contract as if written herein word for word. Owner approved Project Design documents, construction documents, including shop drawings and other submittals to be developed for the Project are as fully a part of the Contract as if attached herein.

3.2 Contract Attachment Listing:

3.2.1 **Design Criteria Packages**

Design Criteria Package – Blanche Ely HS - P.001646
Attachment 1 DCP – Design Builders Design Responsibilities
Attachment 2 DCP – Basic Design Phasing Requirements
Attachment 3 DCP – Identified Codes Regulations Standards
Attachment 4 DCP – Sample Permit Tracking Format
Attachment 5 DCP – Electronic Media Requirements
Attachment 6 DCP – Design Fees
Exhibit 1 – Site Location Plan
Exhibit 2 – Single Line Building Diagrams
Exhibit 3 – Existing Building Document Sets
Exhibit 4 – HVAC Report
Exhibit 5 – Roofing Report

3.2.2 **RFP Attachments**

Attachment A – Bidder's Request for Information Form – Doc 0220
Attachment B – Bid Form – Doc 00410
Attachment C – Bid Security form – Doc 00420
Attachment D – Required Response Form - Proposer Information Form
Attachment E – Sample Milestone Schedule
Attachment F – Design/Builder Staffing
Attachment G – M/WBE Participation
Attachment H – Sample Agreement
Attachment I – Disclosure of Potential Conflict of Interest and Conflicting Employment or Contractual Relationship Form
Attachment J – ACH Payment Agreement Form
Attachment K -- IRS W9 – form 00450
Attachment L – Drug Free Workplace
Attachment M– Design/Builder Risk Evaluation Form
Attachment N – Scope of Potential Self Performed Construction Services
Attachment O – General Conditions for Design/Build
Attachment P – Design/Builder Bid Breakout Form

3.2.3 **Other Contract Executables/Deliverables**

- Document 00435 Schedule of Values – to be approved by the Owner to the first Application for Payment.
- Document 00455 Background Screening of Contractual Personnel
- Document 00470 M/WBE - M/WBE letters of intent
- Document 00480 M/WBE - Unavailability Certificate (if necessary).
- Document 00600 Performance Bond
- Document 00610 payment bond
- All required insurance certificates
- Design/Builders Initial Schedule
- Initial Submittal Schedule

3.3 Online Documents:

The following documents shall be downloaded by the Design Professional and are considered as Attachments and Design guideline requirements of the Contract:

3.3.1 Design Standards

http://www.broward.k12.fl.us/facilities_construction/DSS/DS_Docs/DesignStandards.htm

- Design Criteria
 - Specifications
 - Document Submittal Checklist for Plan Review (URS to update Document currently posted on SBBC website)
 - Design Guidelines

3.3.2 Division 0 Specifications

<http://www.broward.k12.fl.us/constructioncontracts/D0docs.html>

3.3.3 State Requirements for Educational Facilities (SREF) latest edition

<http://www.fldoe.org/edfacil/sref.asp>

3.3.4 F.I.S.H. layering system for AutoCAD: Note: the layering system is not posted on line. It will need to be requested through:

Facility Planning and Real Estate
600 SE 3rd Avenue
Fort Lauderdale, FL 33312
754-321-1932

3.3.5 The documents listed above form the Contract, and they are as fully a part of the contract as if written herein word for word.

ARTICLE 4. CONTRACT SUM

4.1 The Design/Builder's Initial Guaranteed Maximum Price:

_____ Dollars \$ _____

The Owner shall pay and the Design/Builder shall accept, as full and complete payment for the Design/Builder's timely performance of its obligations hereunder, the maximum amount as identified by the **Final Guaranteed Maximum Price (set at 90% Design submittals)**, to be submitted by Design/Builder in its GMP proposal to **RFP 16-043C**.

4.2 This shall constitute the Final Guaranteed Maximum Price, which shall not be modified except by Change Order, as provided in the Contract Documents.

ARTICLE 5. ACCEPTANCE AND PAYMENTS

- 5.1. Up to and including completion of 50 percent of total value of the Work, (on a project by project basis) the Owner may make progress payments during the progress of the Work in amounts not to exceed 90 percent of the amount due as certified by the Design/Builder and approved by the Owner's designated representative. Thereafter, and until Final Completion, the Owner may make progress payments in amounts not to exceed 95 percent of the amount due as certified by the Design/Builder and approved by the Owner's designated representative.
- 5.2. Ten (10) percent of the Contract Price shall be withheld whenever partial progress payments are payable until the Work is Fifty (50) percent complete. Thereafter, in accordance with Policy 7005, five (5) percent or less shall be withheld until Board approval of Final Acceptance and Release of Retainage.
- 5.2.1 Retainage requirements apply to construction phases only.

ARTICLE 6. CONTRACT TIME

- 6.1 Upon execution of the contract by both the Design/Builder and the Owner, submittal of the required performance and payment bonds, certificates of insurance, and receipt and approval of the required post-bid information and executables, the Owner will issue **Document 00550, Notice to Proceed** which will stipulate the commencement date for the Work.
- 6.2 All time in the Contract Documents is calculated on a calendar day basis.
- 6.3 The Design/Builder shall commence the performance of the Work on the date stipulated on Document 00550, Notice to Proceed, and shall diligently continue its performance to and until final completion.
- 6.4 Completion Dates
- A. Substantial Completion
1. The Design/Builder shall accomplish Substantial Completion of the Work on or before: February 14, 2018
- B. Final Completion
1. The Design/Builder shall accomplish Final Completion of the Work on or before: April 24, 2018

ARTICLE 7. SUBSTANTIAL COMPLETION AND FINAL COMPLETION

7.1 Substantial Completion

- 7.1.1 The pre-requisite for Substantial Completion is the receipt Of a Certificate of Occupancy.
- 7.1.2 Partial use or occupancy of the Work shall not result in the Work being deemed to be substantially completed, and such partial use or occupancy shall not be evidence of Substantial Completion.
- 7.1.3 Substantial Completion, in the context of this Contract, does not refer to any prior dates wherein the Owner employs other Design/Builders to work on the same site of the Project or Work.
- 7.1.4 When the Design/Builder believes that Substantial Completion has been achieved, the Design/Builder shall submit Document 01770a and OEF 110b to the Design Criteria Professional and shall simultaneously provide to the Design Criteria Professional a Punch List of the incomplete and unacceptable work. The Design Criteria Professional will determine whether the Work (or portion thereof) is appropriately ready for a Substantial Completion Inspection.

7.1.5 If the Work is determined to be ready for a Substantial Completion Inspection, the Owner's Design Professional and Owner will conduct an inspection of the Work to determine if the Work is, in fact, substantially complete and establish an official Punch List of items necessary for the Design/Builder to correct or finish. When Substantial Completion has been granted as evidenced by the Substantial Completion Inspection, the Design Criteria Professional will issue Doc 01770e and OEF 110b formally establishing the Substantial Completion Date for the Work.

7.1.6 When the Design/Builder has achieved Substantial Completion, the Owner shall approve the payment of any outstanding balance to the Contract, excluding retainage, and the value of the Punch List Work not accepted by the Owner. The value of each item on the Punch List shall be established at three times the estimated, reasonable, direct cost of the Work as established by the Owner.

After Substantial Completion of the Work in its entirety, and upon Board approval, the Owner shall pay the Design/Builder an amount sufficient to increase total payments to the Design/Builder to the Contract Price, less retainage, less any amounts attributable to liquidated damages, and less 300 percent of the reasonable costs (as determined by the Owner at its sole discretion), for completing Work, correcting and bringing into conformance all defective and nonconforming Work and handling any outstanding or threatened claims or any other matters which could cause the Owner damage, cost, expense or delay.

7.2 - Final Completion

7.2.1 When the Design/Builder believes that the Work or portion thereof, is complete and is ready for a final inspection, the Design/Builder shall notify the Design Criteria Professional in writing. The Design Criteria Professional will then determine whether the Work (or portion thereof) is appropriately ready for a Final Completion Inspection. The Design Criteria Professional and Owner will then conduct an inspection of the Work to determine if the Work is, in fact, complete. If so, the Design Criteria Professional will issue a letter formally establishing the Final Completion Date for the Work or portion thereof.

7.2.2 When the Design Criteria Professional and Owner confirms that the Project is complete in full accordance with the Contract Documents and has passed all required inspections, and that the Design/Builder has performed all of its obligations to the Owner, the Design Criteria Professional will provide a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Design/Builder is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to Contract Documents.

7.2.3 When Final Completion has been achieved as evidenced by the passing of all final inspections, the Design/Builder shall request the OEF 209 from the Building Department.

ARTICLE 8. LIQUIDATED DAMAGES

8.1 Liquidated Damages for Substantial Completion on the Package:

The Design/Builder shall pay the Owner the sum of: Five Hundred Dollars (\$500) per day, for each calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion. This applies to each separate school project.

8.2 It is acknowledged that the Design/Builder's failure to achieve substantial completion of the Work within the Contract Time provided by the Contract Documents will cause the Owner to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Owner of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Design/Builder agrees that liquidated damages may be assessed and recovered by the Owner as against Design/Builder and its Surety, in the event of delayed completion and without the Owner being required to present any evidence of the amount or character of actual damages sustained by reason

thereof; therefore Design/Builder shall be liable to the Owner for payment of liquidated damages in the amount of Five Hundred Dollars (\$500) for each calendar day that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Design/Builder shall pay them to Owner without limiting Owner's right to terminate this agreement for default as provided elsewhere herein.

ARTICLE 9. FINAL PAYMENT

- 9.1 Prior to being entitled to receive final payment and as a condition precedent thereto, the Design/Builder shall have achieved Final Completion as defined herein above, and the Board shall approve Final Acceptance and Release of Retainage.
- 9.2 Prior to being entitled to receive final payment and as a condition precedent thereto, the Design/Builder shall provide the Owner, in the form and manner required by Owner, if any, with a copy to the Owner's Design Criteria Professional: of the following:
- 9.2.1 An affidavit that all of the Design/Builder's obligations to subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied.
- 9.2.2 Such other documents as required by the Owner from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Owner.
- 9.2.3 All product warranties, operating manuals, instruction manuals, including as built and record documents, final site surveys and other things or documents customarily required of the Design/Builder, or reasonably required by Owner, including but not limited to those required elsewhere in the Contract Documents, as part of its Project Closeout procedures.
- 9.3 The Owner shall, subject to its rights set forth in the Contract Documents, make final payment of all sums due the Design/Builder within thirty (30) days of the School Board approval of Final Acceptance and Release of Retainage.

ARTICLE 10. CLAIMS - NO DAMAGE FOR DELAY

- 10.1 The Design/Builder shall not be entitled to any claim for damages or an extension of time on account of hindrance or delays from any cause whatsoever, but if caused by any act of God or active interference on the part of the Owner, such act, hindrance, or delay may only entitle the Design/Builder to receive an extension of time as its sole and exclusive remedy. Refer to Section 00700 General Conditions, Article 31 for more information.
- 10.2 Adverse weather such as rain is not to be considered to be an Act of God unless it exceeds the ten (10) year average as published by the National Weather Service (or equivalent organization acceptable to the Owner at its sole discretion) measured on a monthly basis for Broward County.
- 10.3 An extension of time to complete the Work shall be determined by the Owner provided that the Design/Builder provides the Owner with notice in writing of the cause of said act, hindrance or delay within five (5) days after its occurrence.
- 10.4 All extensions of time shall be authorized only by a written change order executed by the Owner, the Design Criteria Professional and the Design/Builder.
- 10.5 Damages as referenced in this "no damage for delay" shall include any type of damages that are or could be awarded by any court or arbitration panel such as, by way of general example, but not

limitation, tort, contract, strict liability, consequential damages, liquidated damages and/or punitive damages.

- 10.6 By way of specific example but not limitation, damages as referenced within this clause includes loss of use, loss of profits, labor inefficiency, loss of bonding capacity, overhead and repair costs, costs of capital replacement, loss of wages, pain and suffering, loss of production costs to replace facilities, equipment and/or product loss, increased and/or extended home office overhead, increased general conditions, costs of mobilization and demobilization, decrease in value, and/or any other damage or loss.
- 10.7 The Design/Builder recognizes and specifically acknowledges the terms and conditions of the "no damage for delay" clause upon execution of this Contract.

ARTICLE 11. DESIGN SERVICES AND RESPONSIBILITIES

- 11.1 Refer to the Design Criteria Packages for Design/Builder design responsibilities, and for basic phasing requirements.
- 11.2 The Design/Builder agrees to provide complete professional design and engineering services set forth as required for the project scope as defined in the contents of the Design Criteria Package.
- 11.3 The Design/Builder shall coordinate and cooperate with the Owner concerning submittal procedures and protocol for delivering construction documents and any approvals required prior to submittal of construction documents to the Building Department.
- 11.4 The Design/Builder shall be responsible for filing the required documents for approval by all governmental authorities or agencies having jurisdiction over the Project and for obtaining certifications of "permit approval" by reviewing authorities prior to construction or as required during the appropriate sequence of construction.

ARTICLE 12. CONTRACT TERMINATION

- 12.1 Refer to Section 00700-General Conditions, Articles 41 and 43.

ARTICLE 13. PROTECTION OF OWNER'S PROPERTY

- 13.1. At all times during the performance of this contract, the Design/Builder shall protect the Owner's property from all damage whatsoever on account of the work being performed under this contract. Refer Section 00700 – General Conditions, Articles 23 and 26.

ARTICLE 14. INSURANCE REQUIREMENTS

- 14.1 The Design/Builder and Design/Builder's Architect shall furnish the Owner a Certificate of Insurance evidencing all types and amounts of insurance coverage's required by this contract have been obtained and are in full force and effect during the life of this contract within 10 days of Notice of Award or prior to commencement of the Work, whichever is sooner, by the Owner. Such Certificate(s) of Insurance shall include a minimum 30-day written notice to the Owner of any material change in coverage, policy terms, expiration, or cancellation.
- 14.2 All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All insurance companies providing policies required under this contract shall have at least an "A-" rating and a financial rating not less than VI in the current A.M. Best Manual or hold a Moody's Investors Service Financial Strength of "Aa3" or better.

- 14.3 All insurance policies required under this contract shall be endorsed to be primary of all other valid and collectable coverage's maintained by the Owner. The School Board of Broward County shall be named as an additional insured under the Commercial General Liability policy and any other policy required by the agreement.
- 14.4 The Owner reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the life of this contract.
- 14.5 Neither approval by the Owner, nor failure to disapprove the insurance provided by the Design/Builder shall relieve the Design/Builder of full responsibility to provide the insurance as required by this contract.
- 14.6 The Design/Builder shall verify that all subcontractors utilized in conjunction with all services provided under this contract shall maintain insurance of the type, amount, and classification required by these provisions, unless the Design/Builder's insurance provides coverage on behalf of the subcontractor(s). When requested by the Owner, the Design/Builder shall obtain and furnish copies of a Certificate of Insurance evidencing coverage for subcontractor(s).
- 14.7 The Design/Builder will not be permitted to provide any products or services under this contract until the Design/Builder has obtained all insurances required hereunder and such insurances have been approved by the Owner. No payment will be made under the contract until satisfactory evidence of insurance is received.
- 14.8 The Design/Builder shall agree to a Waiver of Subrogation for each required policy providing coverage during the life of this contract. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss agreement to waive subrogation without an endorsement, the Design/Builder shall request a Waiver of Transfer of Rights of Recovery against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which as a condition to the policy specifically prohibits such an endorsement, or voids coverage should Design/Builder enter into an agreement on a pre-loss basis. The Waiver of Subrogation shall be in accordance with all of the limits, terms and conditions set forth herein.
- 14.9 If any action by any person, firm or corporation is brought or threatened against the Owner or against the Design/Builder and the Owner for any alleged loss, damage or injury arising out of or in the consequence of the performance or nonperformance of the Contract which, in the reasonable opinion of the Owner, may not be covered by the contingent liability, public liability or property damage insurance policy, or, which together with other such actions or claims seeks a recovery in excess of the amount payable under such policies, the amount of such recovery sought or so much thereof as the Owner reasonably deems necessary, may be withheld by the Owner from any money due the Design/Builder.
- 14.10 MINIMUM LIMITS OF INSURANCE
- 14.10.1 COMMERCIAL GENERAL LIABILITY: The Design/Builder shall maintain Comprehensive General Liability Insurance, including Products & Completed Operations, Personal and Bodily Injury, and Contractual Liability, to cover the indemnification language set forth herein. Limits shall not be less than \$2,000,000 per occurrence; \$2,000,000 general aggregate. The aggregate limit shall apply per location/project. Products Completed Operations aggregate shall apply per location/project with limits not less than \$2,000,000 and must be maintained for not less than three (3) years following completion and acceptance by Owner. The Owner shall be named as an Additional Insured under the Commercial General Liability policy.
- 14.10.2 BUSINESS AUTOMOBILE LIABILITY: Design/Builder shall maintain Business Automobile Liability insurance covering all owned, non-owned, rented or hired vehicles used in connection with this contract, in amounts not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

If Design/Builder does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 will be accepted. In addition, an affidavit signed by the Awardee must be furnished to SBBC indicating the following:

_____ [Design/Builder Name] does not own any vehicles. In the event insured acquires any vehicles throughout the term of this contract, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition. (Fax affidavit with Certificate of Insurance to SBBC Risk Management at 866-897-0424.

14.10.3 WORKERS' COMPENSATION: Design/Builder shall maintain Workers' Compensation insurance for all of its employees connected with the provided services as described in this contract in accordance with Florida Statutory limits, and Employers Liability insurance with a limit of not less than (\$500,000/ \$500,000/\$500,000) per accident. In the event the Design/Builder utilizes a professional employer organization arrangement, the Design/Builder must still provide evidence of Workers' Compensation coverage for Design/Builder (Design/Builder identified as first named insured).

14.10.4 PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS) INSURANCE: The Design/Builder's Architect shall procure Professional Liability Insurance in the manner described herein. The Professional Liability Insurance must provide for all sums, which the Design/Builder's Architect shall be legally obligated to pay as damages for claims arising out of or relating to the negligent services performed by the Design/Builder or any person employed or acting on the Design/Builder's behalf (including, but not limited to, Professional Consultants and Sub-Consultants) in connection with this Contract. The deductible shall not be more than fifty thousand (\$50,000) dollars for each policy and must be indicated on the certificate of insurance. If the Owner, at its sole discretion, agrees that such coverage is not commercially reasonably available, the Owner may, at its discretion, authorize the Design/Builder to alter the coverage by substituting a lower aggregate or changing any other terms and conditions of the coverage (including but not limited to deductible amounts) based upon the scope of the project. The insurance policy shall be non-cancelable and the limits of the Professional Liability Insurance Policy shall be as follows:

14.10.4.1 Projects require a practice policy with a per claim/annual aggregate in accordance with the specifications delineated below relative to the cumulative construction value of all projects:

- A. One Million (\$1,000,000) Dollars on a per claim/One Million (\$1,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is less than Five Million (\$5,000,000) Dollars.
- B. One Million (\$1,000,000) Dollars on a per claim/Three Million (\$3,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is between Five Million One (\$5,000,001) Dollars to Ten Million (\$10,000,000) Dollars.
- C. One Million (\$1,000,000) Dollars on a per claim/Five Million (\$5,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is greater than Ten Million One (\$10,000,001) Dollars.

14.10.4.2 The Design/Builder and/or Design/Builder's Architect shall be required to maintain the practice policy in accordance with the above specifications for a period commencing with execution of this contract and terminating five (5) years after final completion of said projects. In addition, the Design/Builder and/or Design Builder's

Architect shall provide the total number of claims filed against said practice policy on an annual basis to The School Board of Broward County, Florida, deems appropriate.

14.10.4.3 The Professional Liability insurance must provide for all sums which the Design/Builder and/or Design/Builder's Architect shall be legally obligated to pay as damages for claims arising out of or relating to the negligent services performed by the Design/Builder and/or Design/Builder's Architect or any person employed or acting on behalf of the Design/Builder and/or Design/Builder's Architect behalf (including, but not limited to, Sub Consultants) in connection with this Agreement. If the Owner, at its sole discretion, agrees that such coverage is not commercially reasonably available, the Owner may, at its discretion, authorize the Design/Builder and/or Design/Builder's Architect to alter the coverage by substituting a lower aggregate or changing any other terms and conditions of the coverage (including but not limited to deductible amounts) based upon the scope of the project.

14.11 Certificate of Insurance Requirements: Prior to the commencement of any Work, as evidence of required coverage, Design/Builder and Design/Builder's Architect must provide a Certificate of Insurance to The School Board of Broward County, Florida's Risk Management Department for approval. Certificates should be faxed to School Board of Broward County's Certificate Tracking System at 1-866-897-0425.

14.12 Acceptability of Insurance Carriers: The insurance policies must be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Services.

14.13 ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE

14.13.1 Shall clearly identify The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. The endorsement number is:

14.13.2 Shall indicate General Aggregate Limit Applies Per Project.

14.13.3 Shall clearly indicate the Project Number and Project Name to which coverage applies.

14.13.4 Shall clearly indicate Contractual liability is included.

14.13.5 Shall indicate all liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.

14.14 BOARD PROVIDED BUILDER'S RISK INSURANCE PROGRAM

14.14.1 BOARD TO MAINTAIN BUILDER'S RISK INSURANCE PROGRAM: Except as otherwise provided, the Board shall maintain a builder's risk insurance policy on behalf of the Design/Builder and its Subcontractors, in effect at the time that Notice to Proceed is received by Design/Builder.

14.14.2 Board Builder's Risk Insurance Program for the Design/Builder and its Subcontractors will be limited to Covered Loss resulting from damage or destruction of property while such property is at the construction jobsite of the Project as described in this Contract.

14.14.3 No Coverage on Design/Builder's Tools or Equipment: The coverage under the Board Builder's Risk Insurance Program will be limited to property which has been,

or is intended to be, incorporated into the Work as part of the contract price for which title has either been passed to the Board, or is intended to pass to the Board.

14.14.4 Responsibility of the Deductible: The Design/Builder shall be solely responsible for the first \$20,000 of Covered Loss in any one occurrence for any covered peril. If the deductible on the Board Builder's Risk Insurance Program applicable to the Covered Loss exceeds the \$20,000 for which the Design/Builder is responsible, the Board shall be responsible for that portion of Covered Loss incurred by the Design/Builder and its Subcontractors in excess of \$20,000 up to the amount of the deductible in the Board's Builder's Risk Insurance Program.

14.14.5 Commencement of the Board Builder's Risk Insurance Program: The Board Property Insurance Program shall commence with respect to the Work at the later of the date Notice to Proceed is received by the Design/Builder under this contract or commencement of Work at the construction jobsite of the Project as described in the Contract.

14.15 TERMINATION OF BOARD PROPERTY INSURANCE PROGRAM: Coverage under the Board Builder's Risk Insurance Program for the Design/Builder and its Subcontractors shall terminate at the earliest of:

- A. With respect to any completed portion of the Work, if the Board elects to occupy and/or use such completed portion of the Work prior to Substantial Completion, the date the Board first occupies or uses such completed portion of the Work; or
- B. If work by the Design/Builder is permanently abandoned or terminated prior to Substantial Completion, at the time such work is permanently abandoned or terminated; or
- C. Termination of the Contract by the Board.

14.16 BOARD PROPERTY INSURANCE PROGRAM SUBJECT TO LIMITATIONS: The rendering of the Board Builder's Risk Insurance Program shall not constitute any representation by the Board with respect to the adequacy of the insurance to protect the Design/Builder or its Subcontractors against property insurance type losses. The Board emphasizes that coverages in the Board Builder's Risk Insurance Program is limited in scope and do not necessarily include all insurance coverages, either desirable or normally maintained by the Design/Builders or Subcontractors. Except as otherwise specifically provided in the Contract, the providing of the Board Builder's Risk Insurance Program shall not be construed to be a limitation on the nature or extent of the Design/Builder's or its Subcontractors' obligations under this Contract nor to relieve the Design/Builder or its Subcontractors of any such obligations.

14.17 NOTICE OF CLAIM UNDER BOARD BUILDER'S INSURANCE PROGRAM: In addition to, and not in lieu of, any other notice required under this Contract, if a Design/Builder or its Subcontractor suffers injury or damage to property which might result in Covered Loss under the Board Builder's Risk Program, notice of such injury or damage shall be given to the Division of Risk Management of the School Board of Broward County, as soon as practical, but not exceeding seven (7) days after first observance of such injury or damage. The notice shall provide sufficient detail to enable the Division of Risk Management or its designee, to provide an initial report to the Board's insurers and to properly investigate the matter. Notification shall be directed to the SBBC Risk Management Division at (754)-321-1900.

14.18 COOPERATION OF DESIGN/BUILDER AND SUBCONTRACTORS: The Design/Builder and all of its Subcontractors shall assist the Board and the Board's insurers and fully cooperate in respects

to reporting, investigation and adjusting of claims under the Board Builder's Risk Insurance Program whether or not involving the respective Design/Builder or Subcontractor.

- 14.19 **WAIVER OF SUBROGATION:** To the extent such insurance permits, and then only to the extent Board collects under the Board Builder's Risk Program, SBBC waives any and all claims against Design/Builder or Subcontractors and their respective agents, servants and employees, for loss or damage to Board's property. To the extent such insurance permits and then only to the extent the Design/Builder collects under its property insurance coverage, Design/Builder waives any and all claims against Board and its agents, servants and employees for loss or damage to Design/Builder's property. Design/Builder shall require all Subcontractors to waive, to the extent such insurance permits and then only to the extent such Subcontractor collects under its property insurance coverage, any and all claims against SBBC and its agents, servants and employees for loss or damage to such Subcontractor's property.
- 14.20 **BOARD'S RIGHT TO TERMINATE, MODIFY OR REPLACE:** The Board reserves the right to terminate in whole or in part or modify the Board Builder's Risk Insurance Program. In the event of termination or modification, whether initiated by the Board or its insurers, the Board will assume the responsibility for that portion of any loss suffered by the Design/Builder or its Subcontractors which would have been covered by the Board Builder's Risk Insurance Program.

ARTICLE 15. PERFORMANCE BOND AND PAYMENT BOND

- 15.1. The Contract shall become effective and in full force upon the execution of this agreement, concurrently with the delivery of performance bonds and payment bonds as set forth in Article 45 of the General Conditions of the Contract, and as per the Bond Forms as attached to the PFP.

ARTICLE 16. ASSIGNMENT

- 16.1 Neither party to the Agreement shall sell, assign or sublet the same without the written consent of the other; nor shall a Design/Builder assign any monies due or to become due to the Design/Builder or by reason of the Contract without the previous written consent of the Owner and of the surety on the Design/Builder's Bonds, all approved by the Attorney for the Owner.

ARTICLE 17. LIABILITY CLAUSE

- 17.1 This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC:

SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By Design/Builder:

Design/Builder agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Design/Builder, its agents, servants or employees; the equipment of Design/Builder,

its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Design/Builder or the negligence of Design/Builder's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Design/Builder, SBBC or otherwise.

ARTICLE 18. CAPTIONS

- 18.1 The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

ARTICLE 19. EXCESS FUNDS

- 19.1 Any party receiving funds paid by The School Board of Broward County, Florida (SBBC) under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by The School Board of Broward County, Florida.

ARTICLE 20. BACKGROUND SCREENING

- 20.1 *Design/Builder* 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, will 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 SBBC in advance of *Design/Builder* or its personnel providing any services under the conditions described in the previous sentence. *Design/Builder* 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 *Design/Builder* and its personnel. The parties agree that the failure of *Design/Builder* to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. *Design/Builder* agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from *Design/Builder's* failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

ARTICLE 21. EQUAL OPPORTUNITY PROVISION

- 21.1 The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

ARTICLE 22. DEFAULT

- 22.1 The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30)

day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon ten (10) day's written notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05. Refer to Section 00700 General Conditions Articles 41.1.1 and 43.1.11.

ARTICLE 23. ANNUAL APPROPRIATION

- 23.1 The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

ARTICLE 24. PUBLIC RECORDS

- 24.1 Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

ARTICLE 25. NO WAIVER OF SOVEREIGN IMMUNITY

- 25.1 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 or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

ARTICLE 26. NO THIRD PARTY BENEFICIARIES

- 26.1 The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim

against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

ARTICLE 27. COMPLIANCE WITH LAWS

27.1 Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

ARTICLE 28. GOVERNING LAW AND VENUE

28.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

ARTICLE 29. BINDING EFFECT

29.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE 30. ASSIGNMENT

30.1 Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

ARTICLE 31. SEVERABILITY

31.1 In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

ARTICLE 32. PREPARATION OF AGREEMENT

32.1 The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

ARTICLE 33. WAIVER

33.1 The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

ARTICLE 34. FORCE MAJEURE

- 34.1 Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

ARTICLE 35. SURVIVAL

- 35.1 All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

ARTICLE 36. CONTRACT ADMINISTRATION

- 36.1 SBBC has delegated authority to the Superintendent of Schools or his/her designee to implement and administer this Agreement.

ARTICLE 37. REUSE OF DOCUMENTS

- 37.1 It is understood that this agreement includes this provision for the Owner's optional re-use of drawings, specifications and other documents. If the Owner elects to re-use the drawings, specifications and other documents, in whole or in part, for other projects.

ARTICLE 38. INSPECTION OF DESIGN/BUILDER'S RECORDS BY SBBC

- 38.1 Design/Builder shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Design/Builder's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by Design/Builder or any of Design/Builder's payees pursuant to this Agreement. Design/Builder's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. Design/Builder's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) Design/Builder's Records Defined. For the purposes of this Agreement, the term "Design/Builder's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to

Design/Builder's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to *Design/Builder* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *Design/Builder* reasonable advance notice of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to *Design/Builder's* facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by *Design/Builder* to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any *Design/Builder's* claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by *Design/Builder* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *Design/Builder*. If the audit discloses billings or charges to which *Design/Builder* is not contractually entitled, *Design/Builder* shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. *Design/Builder* shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by *Design/Builder* to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to *Design/Builder* pursuant to this Agreement and such excluded costs shall become the liability of *Design/Builder*.

(h) Inspector General Audits. *Design/Builder* shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

ARTICLE 39. NOTICE PROVISION

39.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party, with a copy via facsimile to the addresses shown below, or by registered mail or overnight delivery/courier service (e.g., Federal Express) to that party at the addresses shown below:

Party:

Owner:

The School Board of Broward County,
Florida

Address:

600 SE 3 Avenue
Fort Lauderdale, FL 33312

Attn.: Robert W. Runcie
Superintendent of Schools

Sample Agreement – Attachment H

With Copy To:

Office of The Chief Facilities Officer

600 SE 3 Avenue
Fort Lauderdale, FL 33312
Attn: Jeffrey S Moquin
Designee - Chief Facilities Officer

Office of Facilities & Construction

3775 SW 16th St
Fort Lauderdale, FL 33312
Attn: Shelley N. Meloni
Director, Facilities Pre-Construction

Design/Builder:
(Completed by the
Design/Builder)

Architect:
(Completed by the
Design/Builder)

Surety:
(Completed by the
Design/Builder)
Surety's Agent:
(Completed by the
Design/Builder)

39.2 These addresses may be changed by either of the parties by written notice to the other party.

ARTICLE 40. AUTHORITY

40.1 Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all.

END OF DOCUMENT

Sample Agreement – Attachment H

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written in two counterparts, each of that shall without proof or accounting for the other counterpart, be deemed an original contract.

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(SEAL)

ATTEST THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

Chair
Donna P. Korn

Superintendent of Schools
Robert W. Runcie

Approved as to Form and Legal Content:

Office of the General Counsel

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written in two counterparts, each of that shall without proof or accounting for the other counterpart, be deemed an original contract.

Design/Builder

(ATTEST)
Design/Builder

(SEAL)

President,

Secretary,

ACKNOWLEDGMENT

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all.

The Surety acknowledges that it has read the foregoing Agreement Between Owner and Design/Builder and has familiarized itself with the obligations of the Design/Builder and Surety as stated therein, which obligations are agreed to by Surety and are incorporated by reference, in the Payment and Performance Bonds.

Sample Agreement – Attachment H

SURETY

By: _____

Its: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of
_____, _____ by _____ of

_____, on behalf of the corporation or agency.

He/she is personally known to me or produced _____ as

Identification and did/did not first take an oath.
My commission expires:
(SEAL)

Signature – Notary Public

Printed Name of Notary

Notary's Commission No.

ATTACHMENT-I

Disclosure of Potential Conflict of Interest and Conflicting Employment or Contractual Relationship

RFP # _____ RFP NAME _____

ATTACHMENT I

**DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST AND CONFLICTING EMPLOYMENT OR
CONTRACTUAL RELATIONSHIP**

Proposer must disclose, in its RFP, the names of any employees who are employed by Proposer who are also an employee of SBBC. Persons identified below may have obligations and restrictions applicable to them under Chapter 112, Florida Statutes.

Name of Proposer's Employee	SBBC Title or Position of Proposer's Employee	SBBC Department/ School of Proposer's Employee
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Check one of the following and sign:

- ☐ I hereby affirm that there are no known persons employed by Proposer who are also an employee of SBBC.
- ☐ I hereby affirm that all known persons who are employed by Proposer, who are also an employee of SBBC, have been identified above.

Signature

Company Name

Name of Official

Business Address

City, State, Zip Code

ATTACHMENT-J

ACH Payment Agreement Form

ATTACHMENT J

ACH Payment Agreement Form (ACH CREDITS)

VENDOR NAME:

Authorization Agreement

I (we) hereby authorize The School Board of Broward County to initiate automatic deposits (credits) to my account at the financial institution named below. Additionally, I authorize The School Board of Broward County to make the necessary debit entries/adjustments in the event that a credit entry is made in error.

Further, I agree not to hold The School Board of Broward County responsible for any delay or loss of funds due to incorrect or incomplete information supplied by me or by my financial institution or due to an error on the part of my financial institution in depositing funds to my account.

This agreement will remain in effect until The School Board of Broward County receives written notification of cancellation from me or my financial institution and that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Account Information

Name of Bank or Financial Institution: Branch/ State: Routing No:

Account No: <input type="text"/>	Checking <input type="checkbox"/>	Savings <input type="checkbox"/>
VENDOR AREA:		
Remittance Confirmation: (please select one) <input type="text"/>	Fax <input type="checkbox"/>	Email <input type="checkbox"/>
Federal Identification No. Vendor <input type="text"/>	TAX ID# <input type="checkbox"/>	SS# <input type="checkbox"/>

Update Purchase Order Fax & Email Address

Centralized Fax Number <input type="text"/>	Dept. <input type="text"/>
Centralized Email <input type="text"/>	Dept. <input type="text"/>
Centralized Phone No. <input type="text"/>	Dept. <input type="text"/>

Signature

Authorized Signature
(Primary) and Business title: Date:

Authorized Signature
(Joint) and Business title: Date:

Please attach a VOIDED check to verify bank details and routing number.

This form must be returned to: SBBC – Purchasing – Data Strategy Group
7720 W. Oakland Park Blvd, Sunrise FL 33351 call: 754-321-0516 or fax # 754-321-0533

For Use by DATA STRATEGY GROUP

Vendor Account# Date Entered Initials:

ATTACHMENT-K

IRS W-9 Form

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name/disregarded entity name, if different from above	
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (D-C corporation, S-S corporation, P-partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
- - - - -								
Employer identification number								
- - - - -								

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here

Signature of U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.
Future developments. The IRS has created a page on irs.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity.
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust, and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester.
2. You do not certify your TIN when required (see Part II instructions on page 3 for details).
3. The IRS tells the requester that you furnished an incorrect TIN.
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* on page 1.

What is FATCA reporting? The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulation section 301.7701-2(c)(2)(iii). Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Note. Check the appropriate box for the U.S. federal tax classification of the person whose name is entered on the "Name" line (individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "limited liability company" box only and enter the appropriate code for the U.S. federal tax classification in the space provided. If you are an LLC that is treated as a partnership for U.S. federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation, as appropriate. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for U.S. federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required U.S. federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the *Exemptions* box, any code(s) that may apply to you. See *Exempt payee code* and *Exemption from FATCA reporting code* on page 3.

Exempt payee code. Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following codes identify payees that are exempt from backup withholding:

- 1—An organization exempt from tax under section 501(c)(3), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4047

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 8 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$500 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements.

- A—An organization exempt from tax under section 501(c)(3) or any individual retirement plan as defined in section 7701(d)(37)
- B—The United States or any of its agencies or instrumentalities
- C—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)
- E—A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)
- F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4047(a)(1)

M—A tax exempt trust under a section 408(a) plan or section 457(a) plan

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. **Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

2. **Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. **Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

4. **Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. **Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.