

AGREEMENT

THIS AGREEMENT, made and entered into this **12th day of February, 2013**, by and between THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA, hereinafter referred to as the "Board" and **EMK Consultants of Florida, Inc.**, hereinafter referred to as the "Project Architect/Engineer" or the PA/E:

WITNESSETH

WHEREAS, the Board intends to **repair and/or replace the sanitary sewer system for Tyrone Middle School Project No. 9097**, hereinafter referred to as the "Project;" and

WHEREAS, the Board has established a project budget of \$750,000; and

WHEREAS, the PA/E has been selected by the Board pursuant to Section 287.055, Florida Statutes (the Consultants' Competitive Negotiations Act, hereinafter referred to as "CCNA") to enter into negotiations to provide professional architectural/engineering services to the Board for this Project; and

WHEREAS, the PA/E certifies that he is properly licensed in the State of Florida and in Pinellas County to render the professional services required by this Agreement; and

WHEREAS, the Board has requested the PA/E to prepare Schematic, Preliminary and Construction Documents in accordance with the scope of the Project herein: entitled **repair and/or replace sanitary sewer system for Tyrone Middle School Project No. 9097**, hereinafter referred to as the "Project" and scheduled for approval by the Board on the **12th day of February, 2013** and to provide construction administration during the construction of the Project and cooperate with the Office of the School Board Architect.

NOW, THEREFORE, the Board and the PA/E, for the consideration hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

I. BASIC SERVICES. The PA/E's basic services shall comply with the Florida Building Code, applicable as of the date of this Agreement, and all supplemental rules issued thereto; the Project Program or Educational Specifications; and the Office of the School Board

Architect's "Project Architect and Engineer's Handbook," (hereinafter referred to as the PA/E Handbook) in effect on the date of this Agreement. The PA/E shall follow the requirements of the PA/E Handbook and shall bear responsibility for same except for those specific instances in which he has protested to and received written approval from the Office of the School Board Architect for an exception. The Basic Services shall consist of five phases described in Articles I.A through I.E of this Agreement, unless otherwise expressly stated herein, and shall include, but not necessarily be limited to, normal architectural site design, architectural design, structural, mechanical and electrical engineering.

Architectural site design shall be defined for purposes of this Agreement as those services the PA/E would normally provide to designate paved and walkway areas, establish a building footprint, designate building floor elevations and spot elevations or contour lines of surrounding grades sufficient to indicate surface rain water run-off.

Civil engineering, will be considered as **basic services**.

The PA/E shall prepare and file documents required for approval by governmental authorities having jurisdiction over the Project, except that under Basic Services the PA/E will not be required to serve as an expert witness at public hearings or legal proceedings, nor will the PA/E be required to prepare or file a Development of Regional Impact (DRI) study with the Tampa Bay Regional Planning Council, nor for the Southwest Florida Water Management District, nor local or other environmental agencies. Such services may be provided by the PA/E at the Board's request as an Additional Service. The PA/E shall, however, meet with the District Staff and make presentations to the Board as deemed necessary in the sole discretion of the Office of the School Board Architect as a part of the basic services.

A. Schematic Design Phase I. The PA/E shall review the program and the Project budget requirements as established by the Board, and the proposed site selected by the Board, and shall investigate the conditions at the Project site in order to prepare appropriate schematic architectural and engineering documents in accordance with the program. In the event that an ambiguity or contradiction exists between the program, this Agreement, the PA/E Handbook, or

the Florida Building Code, the PA/E shall apply for and receive from the Office of the School Board Architect a written interpretation which will bind both parties. Upon such written request, the Office of the School Board Architect will respond within thirty (30) working days after the date appearing on the request. Upon application of and receipt from the Office of the School Board Architect of an interpretation of the program, the parties to this Agreement and subsequent agreements will be bound by such interpretation.

During the Schematic Design Phase I, the PA/E shall prepare alternate approaches to design and construction; shall review such with designated representatives of the Owner; and shall continue in these efforts to resolve problems and develop an acceptable design solution to a degree which the Office of the School Board Architect will personally approve for presentation to the Board. Only changes after the Office of the School Board Architect's approval of such schematic design solution may entitle the PA/E to additional compensation.

Based upon the approved program (and any revisions made thereto during the Schematic Design Phase), budget requirements and building site considerations, the PA/E shall prepare and submit for approval by the Board the Schematic Design Document Phase I, consisting of drawings and other documents as defined in the PA/E Handbook illustrating the scale and relationship of the Project components, along with a statement of probable construction cost based upon current area, volume or other unit costs.

Beginning with the Schematic Design Phase I and with each subsequent submittal (Preliminary Design Phase II, if required) and Construction Documents Phase III, the PA/E shall submit an estimated statement of probable construction cost. In the event the estimate exceeds the approved budget sum, the PA/E shall identify the work which can be accomplished for a base bid sum equal to or less than the budgeted sum, and shall identify alternate bids to be bid, together with the estimated costs for such alternate bids. The Board may elect to accept an estimate of construction costs higher than previously established in the budget or previously approved during a phase estimate, or the Board may elect to proceed with the base bid equal to or less than the budgeted sum, along with additive alternate bids, or the Board may reject that

phase submittal. Acceptance of the higher estimate of probable construction costs shall establish a new construction sum for the Project towards which the PA/E shall endeavor to design the project in order to not exceed the estimated construction costs of the new budget adopted by the Board.

B. Preliminary Design Phase II. From the Schematic Design Phase I submittal approved by the Board, and in accordance with the Office of the School Board Architect review requirements, the PA/E will prepare the Preliminary Design Phase II for submission to and approval by the Board. During this phase, the PA/E shall develop appropriate drawings and outline specifications and other documents as required by the PA/E Handbook to establish and describe the size and character of the entire Project with regard to the architectural site design, architectural, structural, mechanical and electrical systems, materials and other such elements as may be appropriate, and shall submit a refined statement of probable construction costs as defined by Article I.A.

C. Construction Document Phase III. The PA/E shall continue to investigate the existing conditions at the Project site after the Board approves the Preliminary Design Phase II submittal and shall make further minor adjustments to the scope or quality of the Project, as authorized by the Board in the previous submittals or by adjustments made to the budget for the Project. Based upon the approved Preliminary Design Phase II submittal as authorized by the Board, and in accordance with Office of the School Board Architect review requirements, the PA/E shall prepare for the Board and/or Department of Education (DOE) approval, the Construction Documents Phase III submittal consisting of final plans (drawings) and specifications setting forth in detail the requirements for the construction of the Project, as defined in the PA/E Handbook. The PA/E shall advise the Board of any adjustments to the previous statements of probable construction cost. The PA/E shall assist the Board in connection with the Board's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

D. Bidding Phase IV. The PA/E shall assist the Board in preparing necessary bidding forms and conditions of the Contract and the form of Agreement between the Board and the Construction Manager or Contractor shall convene, attend and conduct the prebid conference at the job site or any other place designated by the PA/E, and shall assist the Board in obtaining sufficient bids for the Project.

E. Construction Phase V. The construction phase will commence with the award of the Contract for construction. The PA/E will administer the construction contract by making periodic visits to the site at intervals appropriate to the progress of the construction (or otherwise agreed to by the PA/E in writing). The administration of the construction contract shall include but not be limited to the following:

1. convene, attend and conduct the preconstruction conference,
2. prepare and print minutes of all meetings and distribute to the appropriate parties,
3. provide special inspections required by the Office of the School Board Architect in accordance with the contract documents,
4. review shop drawings for compliance with contract documents,
5. attend job site meetings on a weekly or bi-monthly basis as dictated by the scope and size of the construction project,
6. review monthly or other periodic applications for payment by the Construction Manager or Contractor,
7. prepare change orders and/or field orders,
8. prepare punch lists, inspect completed work and edit punch lists as conditions warrant,
9. issue and sign Certificates of Substantial Completion,
10. issue and sign Certificates of Final Inspection,
11. review and approve project close-out documents.

The PA/E shall be the representative of the Board during the construction phase and shall advise and consult with the Board as to all phases of construction. Instructions from the Office of the School Board Architect or Board to the Construction Manager or Contractor shall

be forwarded through the PA/E. The PA/E shall have authority to act on behalf of the Board only to the extent provided for in the contract documents, unless otherwise modified by written mutual agreement. The PA/E shall visit the site at intervals appropriate to various stages of construction and become generally familiar with the progress and quality of the work performed by the Construction Manager or Contractor and determine and advise the Board whether the work is proceeding in accordance with the contract documents. The PA/E shall review, approve, or take other appropriate action upon the Construction Manager's or Contractor's submittal of documents, including, but not limited to, shop drawings, project data and samples, but only for compliance with the design concept of the work and with the information given in the contract documents. Such action by the PA/E shall be taken with reasonable promptness so as to cause no delay to the Project. The PA/E's approval of specific items shall not indicate approval of any assembly of which the item is a component. The PA/E shall certify the Construction Manager's or Contractor's monthly application for payment based upon the percentage of the construction completed at the Project in accordance with the plans and specifications. The PA/E shall determine the amounts owing to the Construction Manager or Contractor based on observations at the site. After evaluating the Construction Manager's or Contractor's application for payment, if the PA/E approves, the PA/E shall sign the certificate and forward it to the Office of the School Board Architect inspector. The failure of the PA/E to forward to the Board the completed submittal and all required back-up data, or if the certificate (or request for payment) is incorrectly prepared or contains arithmetic errors, the Board may reject the Construction Manager's or Contractor's pay application and return it to the PA/E without penalty to the Board because of delay or error.

The PA/E shall invite and include the Office of the School Board Architect to review meetings and to review inspections during the time when the Construction Manager's or Contractor's applications for payment are evaluated by the PA/E.

The PA/E shall provide appropriate administration of the Project including special

inspections and testing of materials and systems at Board expense that are included in the construction contract.

The PA/E shall prepare change orders and keep the Board (through the Office of the School Board Architect) informed monthly as to the progress and quality of the work and endeavor to guard the Board against defects and deficiencies in the work by the Construction Manager, Contractor or his subcontractors and material suppliers.

The PA/E shall conduct appropriate observations to determine the dates of substantial and final completion, receive and forward to the Board written warranties and documents required by the construction contract and certify the final certificate of payment in affidavit form, certifying that to the best of his knowledge the Project has been constructed according to the final plans and specifications, Florida Building Code, ADA and all other applicable codes, and that all mandatory requirements have been satisfied.

The PA/E shall have the authority and duty to reject work by the Construction Manager or Contractor which does not conform to the contract documents. If the PA/E observes faulty materials or workmanship at the Project, or if the PA/E observes the use of improper material or any work not being accomplished in a satisfactory manner by the Construction Manager, Contractor or subcontractors, the PA/E shall immediately notify the Construction Manager or Contractor and the Office of the School Board Architect.

Although the PA/E does not guarantee the performance of the construction contract, the PA/E shall, nevertheless, exercise due diligence to protect the Board against defects and deficiencies in the work and use of improper materials by the Construction Manager or Contractor and subcontractors.

After substantial completion of the work, the PA/E shall furnish the Board with a certified statement, in affidavit form, that in his professional opinion, the Project has been performed and completed according to the contract documents, Florida Building Code, ADA and all other applicable codes, and that all mandatory requirements have been satisfied.

The PA/E shall interpret the requirements of the construction contract documents. The

PA/E shall render such interpretations as are necessary with reasonable promptness when written request is made by the Board, Construction Manager or Contractor. The PA/E shall render written decisions, within seven (7) calendar days, on all claims, disputes and other matters questioned by the Construction Manager, Contractor or Office of the School Board Architect relating to the execution or progress of the work or the interpretation of the contract documents.

The PA/E shall be responsible for creating as built and record drawings using information gathered from the Construction Manager, Surveying Contractor and his personnel.

In the event the Board, Office of the School Board Architect, Construction Manager or Contractor requests the PA/E to visit the Project after substantial completion is accepted by the Board or during the warranty periods, review or observations which are conducted in connection with punch lists or warranty issues shall not be considered Additional Services. However, in the event that the PA/E continues to provide contract administration, because of the failure of the Construction Manager or Contractor to complete the Project within 110% of the calendar days allotted for construction in the contract for construction and in subsequent change orders, after the original construction contract completion date and extensions have been approved and the cause of the delay is the Construction Manager's or Contractor's and is not attributable to the PA/E, the PA/E may request the Board to withhold from the Construction Manager's or Contractor's partial or final payment sufficient sums in order to compensate the PA/E for extended contract administration. If the PA/E certifies that he has provided such extended contract administration and the delay in construction is the fault of the Construction Manager or Contractor and is not attributable to the PA/E, the additional contract administration shall be regarded as Additional Services for which the PA/E shall be entitled to negotiate additional compensation based on an hourly rate.

F. In the event of a claim by the Construction Manager or Contractor based upon error, omission, act, or failure to act, or failure to act in a timely manner on the part of the PA/E, the PA/E shall be liable to the Owner to the extent the Owner is, in turn, obligated to the

Construction Manager or Contractor for these errors, omissions, acts, or failure to act, or failure to act in a timely fashion, together with costs, and reasonable attorney's fees, if any, incurred by the Owner as a result of such error, omissions, act, or failure to act or failure to timely act.

G. If the estimated construction budget (adjusted as provided in the third paragraph on page 1 of this Agreement) is exceeded by the Guaranteed Maximum Price (GMP), the Board shall have the option in the Board's best interest to:

1. give written approval of an increase in such fixed limit; or,
2. if the Project is abandoned, terminate in accordance with Paragraph X; or,
3. cooperate in revising the Project scope and/or quality and/or design as required to reduce the construction cost.

If the Board chooses to proceed under Paragraph G.3. above, the PA/E, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit established as a condition of this Agreement and/or subsequently approved by the Board. A full faith effort (as approved by the Owner) on the part of the PA/E in the modification of the Contract Documents shall be the limit of the PA/E's responsibility arising out of the original establishment of the fixed limit and/or as subsequently approved by the Board. The PA/E shall be entitled to compensation in accordance with this Agreement for all other services actually performed whether or not the Construction Phase is commenced, without considering work in this paragraph to be Additional Services.

II. ADDITIONAL ENGINEERING SERVICES. Additional services, if performed by the PA/E at the request of the Board, shall entitle the PA/E to additional compensation to be negotiated at the time that the Board requests such services. The following are considered additional services: detailed construction cost estimator, acoustician, landscape architect, site irrigation consultant, graphic design consultant, third bid proceeding, expert testimony, public hearing, legal proceedings (unless subpoenaed by the tribunal or a third party), full-time Project representative, program writing, special feasibility studies, master planning, bidding and coordination of separate contracts, expanded services caused by fire or

similar causes or the default of the Construction Manager, Contractor or Board making measured drawings, threshold building inspections as required by the Board and the law, Florida Energy Evaluation Technique (FLEET), development of regional impact study, application to Southwest Florida Water Management District, making revisions inconsistent with prior Board approval, and other services not otherwise included in this Agreement. For further explanation of Additional Services, the PA/E shall refer to the PA/E's Handbook. Generally, if the Board requests Additional Services, the PA/E shall furnish such services requested with the fees to be negotiated between the PA/E and the Board. Under no circumstances will the principals of the PA/E and the principals of his consultants be paid a fee in excess of **\$125** per hour.

III. BOARD RESPONSIBILITIES. The Board shall provide a program (or Educational Specifications) which outlines its design objectives, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment and systems and site requirements.

The Board shall furnish, if necessary, a legal description and land survey of the site, and if applicable, grades and lines of the streets, alleys, pavements, adjoining property, rights-of-way, easements, boundaries and contours of the site, locations, dimensions and complete data pertaining to the existing buildings on the site, and, if necessary, site information as to trees and shrubs and such information as is necessary concerning available services and utility lines above and below grade, including inverts and depths.

The Board shall furnish information and render approvals and decisions as expeditiously as necessary for the orderly progress of the PA/E's services.

IV. COMPENSATION.

The total payment for services will be \$62,195 and is itemized as follows:

A. Payment for Basic Services. For the "Basic Services" to be performed pursuant to this Agreement, the PA/E will be paid a fee of \$25,050 to be paid periodically according to Article V of this Agreement.

B. Payment for Additional Services. The PA/E shall be entitled to additional compensation for those services which the PA/E agrees to perform set forth as follows:

| | |
|--|-----------------------|
| Lump sum upon completion of pre-design study and Phase I documents | \$15,190 |
| Paid periodically in proportion to the percentage of hours submitted on the "Fee Matrix Proposal" | \$17,695 |
| Upon completion of permitting with Department of Environmental Protection (DEP) and final submission to DEP | <u>\$4,260</u> |
| TOTAL | \$37,145 |

C. Reuse of Documents. Notwithstanding anything contained in this Agreement or any Document referenced herein to the contrary, the drawing, specifications and other documents prepared by the PA/E for this Project are instruments of the PA/E's service, but the drawings and specifications shall be owned by the Board. The PA/E shall assign to the Board all common law, statutory and other reserved rights, including the copyright. The Board shall be permitted to retain copies, including reproducible copies, of the PA/E's drawings, specifications and other documents for information and reference in connection with the Board's use and occupancy of the Project. The Board may reuse the drawings, specifications or other documents on other projects in accordance with Sec. 1013.45(4), F.S.

V. PAYMENT SCHEDULE. Compensation (the Basic Services fee) shall be paid to the PA/E based upon Article IV and shall be paid as follows and upon receipt of proper billing:

A. Schematic Design Phase (Phase 1):

1. 100% complete Phase I Documents.....15%).....**\$3,757**
(Upon review and approval by the Office of the School Board Architect)

B. Preliminary Design Phase (Phase II):

1. 100% complete Phase II Documents.....(25%).... **\$6,263**
(Upon review and approval by the Office of the School Board Architect)

C. Construction Documents Phase (Phase III): Documents shall be submitted and payment will be due within 30 days of each submittal as follows:

1. 31.2% complete Phase III Documents..... **\$7,820**

(Upon review and approval by the Office of the School Board Architect)

D. Construction Phase (Phase V): **(Construction Administration)** During the construction phase of the Project, the PA/E will be paid the fee of **\$7,210** to be paid periodically in proportion to the percentage of construction completed on the project.

VI. TIMELINE. Time is of the essence in performing the services required pursuant to this Agreement. The following time schedule shall govern the Project and Agreement, except to the extent waived by the Board or the Office of the School Board Architect in writing or otherwise expressly stated herein:

A. Following approval of this Agreement, the Schematic Design Phase I submittal for the Project shall be submitted to the Office of the School Board Architect on or before **15** calendar days.

B. Following approval of the Schematic Design Phase I submittal by the Board, the Preliminary Design Phase II submittal for the Project shall be submitted to the Office of the School Board Architect on or before **15** calendar days for a total of **30** calendar days.

C. Following approval of the Preliminary Design Phase II submittal by the Board, the Construction Documents Phase III 100% complete submittal shall be presented to the Office of the School Board Architect on or before **15** calendar days for a total of **45** calendar days.

D. Any required revisions to a design phase to obtain State of Florida (DOE), Board, or Office of the School Board Architect approval shall extend the above timelines for a reasonable period of time in order to comply with the required revisions.

E. If major revisions to the final design phase documents are requested and made or the Board makes major revisions in the program scope or Educational Specifications, the parties shall negotiate a reasonable fee for such major revisions or changes.

VII. EXTRA COMPENSATION. The Board shall pay no fees, other than described above, to the PA/E unless authorized by the Board as follows:

A. If the scope of the Project or site is changed, the Board and the PA/E shall negotiate

a reasonable fee based upon the probable estimated construction cost in changing the scope of the work and the approximate percentage of the estimated construction cost which was used to negotiate this Agreement if, and, as such may be applicable.

B. If the DOE or Board requires the PA/E to make major or costly changes to the Schematic, Preliminary or Construction Document Phase submittals, which changes are not caused by architectural or engineering error or oversight, the PA/E shall be paid to redesign for additional expenses in an amount agreed to by the parties. Under no circumstances will the principals of the PA/E and the principals of his consultants be paid a fee in excess of **\$125** per hour.

VIII. DOCUMENTS.

IX. ASSIGNMENTS AND AMENDMENTS. Neither the PA/E nor the Board shall assign, sublet or transfer any interest in this Agreement without the consent of both parties. This Agreement may be amended only by written instrument signed by both the PA/E and the Superintendent of Schools, as approved by the Board.

X. TERMINATION. This Agreement may be terminated by either party upon seven (7) days' written notice by U. S. Certified Mail that the other party failed substantially to perform in accordance with the terms and conditions of this Agreement through no fault of the party initiating termination. This Agreement may be terminated without cause by either party upon thirty (30) days' written notice by U. S. Certified Mail. Termination of this Agreement may only be accomplished as provided herein. In the event this Agreement is terminated by the Board without cause, compensation shall be paid to the PA/E for all services performed to the date of termination. If terminated by the PA/E without cause, the PA/E shall be liable to the Board for direct and consequential damages resulting from the PA/E not completing the contract.

XI. COOPERATION WITH THE OFFICE OF THE SCHOOL BOARD ARCHITECT. The PA/E shall work in cooperation with the Office of the School Board Architect on all phases of the Project. The Office of the School Board Architect shall be the liaison between the Board and the PA/E, and whenever this Agreement requires the PA/E to tender any item, article or work

product to the Board, such tender shall be accomplished upon timely presentation of such item or work product to the Office of the School Board Architect which shall include transmittal of each design phase submittal in order to present this submittal to the Board in accordance with Article VI. The PA/E shall rely on any written statement from the Office of the School Board Architect that the Board or Superintendent of the School District has taken some action required or allowed by this Agreement. Questions of design, budget, construction, unforeseen problems and related matters shall be submitted to the Office of the School Board Architect for transmittal to the Board and/or the PA/E.

XII. PROHIBITION AGAINST CONTINGENT FEE. The PA/E warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the PA/E, to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the PA/E, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement (287.055, Florida Statutes). For a breach or violation of this provision, the Board shall have the right to terminate the Agreement without liability and, at its discretion, deduct from the Contract price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

XIII. TRUTH-IN-NEGOTIATION. The PA/E shall provide a truth-in-negotiation certificate stating that wages and other factual unit costs supporting the negotiated fee were accurate, complete and current at the execution of the Agreement. The Agreement price shall be adjusted to exclude any significant sums the Board determines inflated the Agreement price due to inaccurate, incomplete wage rates or noncurrent wage rates and other factual unit costs. All adjustments shall be made within one (1) year following issuance of a Certificate of Final Inspection and/or termination of this Agreement.

XIV. PROFESSIONAL LIABILITY INSURANCE. The Board will not purchase a blanket professional liability insurance policy to cover the PA/E and its consultants. It is the responsibility of the PA/E to provide, and PA/E will provide, liability insurance in the amount of

\$1,000,000 with a \$25,000 deductible. The PA/E may provide more insurance and/or a lower deductible at his/her discretion.

XV. INDEMNITY AND LIMITATION OF THE PA/E'S LIABILITY TO THE BOARD. The PA/E agrees to indemnify and hold harmless the Board from and against all claims, damages and related expenses including attorney fees arising out of the negligent acts, errors and omissions of the PA/E or its consultants on this project.

XVI. INABILITY TO FUND THE PROJECT. Upon written certification by the Board that the Project cannot be funded from the Board's budget, performance under this Agreement shall be suspended. In the event this Agreement is suspended as provided in this Article, compensation will be made to the PA/E for all services performed to the date on which the Board provides the PA/E with written certification of "lack of funding," and such compensation will be in complete satisfaction of any claim or right of action which the PA/E may possess for damages for non-performance by the Board of any executory term of this Agreement.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written.

THE SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA

By: _____
Carol J. Cook, Chairperson

Attest: _____
Michael A. Grego, Ed. D.
Superintendent

EMK Consultants of Florida, Inc.
7815 North Dale Mabry Highway, Suite 200
Tampa, Florida 33614

By: _____

Title: _____

print or type name

Approved as to Form:

Daniel K. [Signature]
School Board Attorney