

AGREEMENT

THIS AGREEMENT, made and entered into this **15th day of March 2016**, by and between THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA, hereinafter referred to as the "Board" and **Engineering Matrix, Inc.** hereinafter referred to as the "Project Architect/Engineer" or the PA/E:

WITNESSETH

WHEREAS, the Board intends to construct **Replacement of Heating Ventilation, and Air Conditioning (HVAC) Building Management Control System for entire campus at Dixie Hollins High School, Project No. 9079**, hereinafter referred to as the "Project;" and

WHEREAS, the Board has established a construction budget of **\$830,000** for the Project; 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 Preliminary and Construction Documents in accordance with the scope of the Project herein: entitled **Replacement of Heating Ventilation, and Air Conditioning (HVAC) Building Management Control System for entire campus at Dixie Hollins High School, Project No. 9079**, hereinafter referred to as the "Project" and scheduled for approval by the Board on the **15th day of March, 2016**, and to provide construction administration during the construction of the Project and cooperate with the Facilities Design & Construction Department.

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 Facilities Design & Construction Department'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 Facilities Design & Construction Department 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, except provided above as an architectural site design, will be considered as "additional services" as defined in Article II.

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 prepare detailed information for the Department of Environmental Protection, (hereinafter referred to as the "DEP"), 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 Facilities Design & Construction Department as a part of the basic services.

A. Preliminary Design Phase II. The PA/E will prepare the Preliminary Design Phase II approval documents including 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.

B. Construction Document Phase III. The PA/E shall continue to investigate the existing conditions at the Project site after approval of the Preliminary Design Phase II submittal and shall make further minor adjustments to the scope or quality of the Project, as authorized in previous submittals or by adjustments made to the budget for the Project. Based upon the approved Preliminary Design Phase II submittal as approved by the Facilities Design & Construction Department, the PA/E shall prepare 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 of documents required for the approval of governmental authorities having jurisdiction over the Project.

C. Permit Phase IV. The PA/E shall assist in preparing necessary forms and conditions of the Contract and the form of Agreement between the Board and the Construction Manager or Contractor and shall assist the Board in obtaining sufficient bids for the project.

D. 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 Facilities Design & Construction Department 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 represent the Board during the construction phase and shall advise and consult as to all phases of construction. Instructions from the Facilities Design & Construction Department 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 Facilities Design & Construction Department inspector. The failure of the PA/E to forward 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 Facilities Design & Construction Department 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 Facilities Design & Construction Department 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 Facilities Design & Construction Department.

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 Facilities Design & Construction Department relating to the execution or progress of the work or the interpretation of the contract documents.

The PA/E shall diligently assist the Facilities Design & Construction Department in obtaining correct and accurate as-built or record drawings from the Construction Manager or Contractor.

In the event the Board, Facilities Design & Construction Department, 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.

E. 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.

F. 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 F.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 ARCHITECTURAL 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, on-site civil engineering, off-site civil engineering, 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, evaluation of more than one site, 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, travel out-of-county requested by the Board, threshold building inspections as required by the Board and the law, Florida Energy Evaluation Technique (FLEET), development of regional impact study, applications to DEP, 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 **\$70,000** 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 **\$60,000** to be paid periodically according to Article V of this Agreement.

B. Payment for Additional Services. PA/E will perform a Dynamic Controls Validation additional service. For the additional service the PA/E will be paid a fee of **\$10,000** to be paid periodically on a time and materials basis according to services rendered.

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. Preliminary Design Phase (Phase II):

1. 100% complete Phase II Documents.....**(30%).....\$18,000**
(Upon review and approval by the Facilities Design & Construction Department)

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

1. 90% complete Phase III Documents.....**(35%).....\$21,000**
(Upon review and approval by the Facilities Design & Construction Department)

2. 100% complete Phase III Documents (Upon DOE or Office of the School Board Architect's approval including satisfaction of the permit review mandatory's).....**(5%).....\$3,000**

C. 100% permit review Documents..... **(5%).....\$3,000**

D. Construction Phase (Phase V):**(25%)..... \$15,000**

During the construction phase of the Project, the PA/E will 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 Facilities Design & Construction Department in writing or otherwise expressly stated herein:

A. The Preliminary Design Phase II submittal for the Project shall be submitted to the Facilities Design & Construction Department on or before **thirty (30)** calendar days for submittal.

B. Following approval of the Preliminary Design Phase II, the Construction Documents

Phase III 90% complete submittal shall be presented to the Facilities Design & Construction Department on or before **thirty (30)** calendar days.

C. Following approval of the 90% Construction Documents Phase III, the Construction Documents Phase III 100% complete submittal shall be presented to the Facilities Design & Construction Department on or before **fifteen (15)** calendar days.

D. Any required revisions to a design phase to obtain State of Florida (DOE), Board, or Facilities Design & Construction Department 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. The Board will reimburse the PA/E for reproduction costs of plans and specifications as set forth in the PA/E Handbook.

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 FACILITIES DESIGN & CONSTRUCTION

DEPARTMENT. The PA/E shall work in cooperation with the Facilities Design & Construction Department on all phases of the Project. The Facilities Design & Construction Department 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 Facilities Design & Construction Department 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 Facilities Design & Construction Department 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 Facilities Design & Construction Department 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.

XVII. PUBLIC RECORD LAW. The School Board of Pinellas County, Florida (the "Board"), is a public agency subject to Chapter 119, Florida Statutes. Effective July 1, 2013, the Florida Legislature enacted §119.0701. This statute requires that all contractors shall comply with Florida's public record laws with respect to services performed on behalf of the Board.

Specifically, the statute requires that contractors:

- i. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- ii. Provide the public with access to public records on the same terms and conditions that a public agency would provide the records and at a cost that does not exceed the cost provided by Chapter 119 of the Florida Statutes or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- iv. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Board in a format that is compatible with the information technology systems of the Board.

The failure of the Contractor to comply with the provisions set forth in this Article, if applicable, shall constitute a default and material breach of this Agreement, which may result in immediate termination, with no penalty to the Board.

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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: _____
Peggy L. O'Shea, Chairperson

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

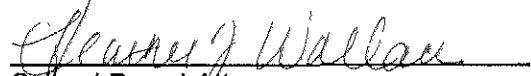
Engineering Matrix, Inc.
2860 Scherer Dr.
St. Petersburg, FL 33716

By: _____

Title: _____

print or type name

Approved as to Form:



School Board Attorney