



# Orange County Public Schools

Procurement Services • 6501 Magic Way, Building 100B • Orlando, FL 32809 • Phone 407.317.3791

## AGREEMENT

By and Between

The School Board of Orange County, Florida

And

\_\_\_\_\_

This agreement (“agreement”) is made by and between the School Board Of Orange County, Florida, a political subdivision of the State of Florida, located at 445 West Amelia Street, Orlando, Florida 32801, hereinafter referred to as “SBOC,” and \_\_\_\_\_, hereinafter referred to as “Contractor,” each individual referred to as a “party” and, collectively, the “parties.”

## WITNESSETH:

WHEREAS, SBOC desires to secure a contractual relationship for the purpose of the removal of the existing coolers and replacement of new walk-in cooler/freezer units at Bonneville Elementary and Liberty Middle School, as outlined in Exhibit “A” Scope of Services, and

WHEREAS, these Services have been competitively solicited pursuant to Florida s. 287.057, which has been assigned to bid number **ITB1505098** by SBOC for tracking purposes.

**NOW THEREFORE**, for good and valuable consideration and the mutual promises contained herein, the Parties agree as follows:

### ARTICLE 1 – DEFINITIONS

The following definitions of terms associated with this Agreement are provided to establish a common understanding between both Parties to this Agreement, as to the intended application, interpretation, and usage of terms in connection with this Agreement.

- (a) “**AGREEMENT**” refers to the executed Agreement by and between SBOC and Contractor.
- (b) “**AMENDMENT**” means a written document authorized by the parties to this Agreement which, when executed by both parties, sets forth any changes to that certain scope of services (“Services”), attached hereto as Exhibit “A” and incorporated herein by reference, that contemplates a change in the Services, work, and materials to be provided and performed by Contractor pursuant to this Agreement, sets forth the basis of compensation due to Contractor of, and sets forth the time period and/or schedule for performance and completion thereof.
- (c) “**CONFIDENTIALITY**” For purposes hereof, “Confidential Information” shall mean any non-public information of the other party that is designated as confidential, or that the receiving party knew or reasonably should have known was confidential because it derives independent value from not being generally known to the public. Confidential Information shall not include any information which: (a) a party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the other party; (b) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of a party; (c) a party has developed independently without reference to any Confidential Information of the other party; (d) a party can demonstrate such information came into its possession from a third-party who had a bona fide right to make such information available; or (e) is subject to the Florida Public Records Law, Chapter 119, Florida Statutes, or any other information required to be disclosed by a valid court order or agency of government.
- (d) “**CONTRACTOR**” means INSERT LEGAL NAME OF CONTRACTOR HERE, a Party hereto, who is authorized to conduct business in the State of Florida, offering Services hereunder, which has executed this Agreement, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the Services, work, and materials, including services and/or work of any approved sub-contractors, required under the covenants, terms, and provisions contained in this Agreement and any and all Amendments thereto.
- (e) “**FUNDS**” shall mean payment made by SBOC to Contractor hereunder.
- (f) “**OCPS**” shall mean Orange County Public Schools and may be used interchangeably with SBOC or The School Board of Orange County, Florida.

- (g) "**PARTIES**" shall mean the parties entering into this Agreement, SBOC and Contractor, respectively.
- (h) "**SBOC**" shall mean The School Board of Orange County, Florida, a political subdivision of the State of Florida, and may be used interchangeably with OCPS or Orange County Public Schools.
- (i) "**SERVICES**" shall mean the services as set forth and required, pursuant to the Agreement and described in further detail in Exhibit "A," attached hereto and incorporated herein by reference.

#### **ARTICLE 2 - AMENDMENTS AND MODIFICATIONS**

No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the parties.

#### **ARTICLE 3 – TERM AND TERMINATION**

- (a) The term of this Agreement will cover the period beginning **June 24, 2015** through **June 25, 2016**, during which time the successful Bidder shall guarantee fixed pricing, as specified in the Bid.
- (b) Contractor shall give SBOC written notice of any substantial failure to perform under this Agreement through no fault of Contractor. If SBOC fails to correct or diligently pursue cure of such failure within ten (10) business days of receipt of notice, this Agreement may be terminated by Contractor, at its option, upon thirty (30) calendar days' prior written notice to SBOC. This Agreement may be terminated by SBOC with or without cause upon thirty (30) days' written notice sent by certified mail to Contractor. In the event of a material breach by Contractor hereunder through no fault of SBOC, SBOC may, at its option, terminate this Agreement immediately.

#### **ARTICLE 4 - PAYMENT**

- (a) SBOC agrees to provide Funds for the Agreement as outlined in Exhibit "B," Fee Schedule, which is attached hereto and incorporated herein. Payments shall be made on or about forty-five (45) days after SBOC's receipt of invoice. SBOC shall pay these fees to Contractor for services rendered as outlined in Exhibit "B" which includes all direct charges, indirect charges, and reimbursable expenses, if any.
- (b) Subject to Contractor's right to cure under Article 3 herein, should the project not be completed as scheduled, Contractor and SBOC will jointly plan a revised completion date for the project. Failure on the part of Contractor to complete its work in an accurate and quality manner shall be considered a default of this Agreement.
- (c) Completion of a phase is defined by an appropriate signoff by SBOC's and Contractor's project manager that all activities of that phase have been satisfactorily completed according to the project schedule, as agreed upon by both parties attached Exhibit "A". Contractor and SBOC will agree upon planned completion dates for each phase and work in good faith to meet the planned schedule. SBOC reserves the right throughout each phase to conduct a quality assurance check to ensure accuracy, quality and delivery of work.
- (d) Contractor shall have no obligation to refund to SBOC any amount paid by SBOC for any reason whatsoever.
- (e) Final Notice: The final invoice for payment shall be submitted to SBOC no more than forty-five days (45) after the Agreement term ends or the Agreement is terminated. Any payment due under the terms of this Agreement may be withheld until all reports due from Contractor, and necessary adjustments thereto, have been approved by SBOC.

#### **ARTICLE 5 - AVAILABILITY OF FUNDS**

The obligations of SBOC under this Agreement are subject to the availability of Funds lawfully appropriated for its purpose by the State of Florida and SBOC.

#### **ARTICLE 6 - TRUTH-IN-NEGOTIATION CERTIFICATE**

- (a) Signature of this Agreement by Contractor shall be deemed an acknowledgement and certification by Contractor that the wage rates and costs used to determine the Funds provided for in this Agreement are accurate, complete, and current as of the date of this Agreement.
- (b) The said rates and costs shall be adjusted to exclude any significant sums should SBOC determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to Contractor. SBOC shall exercise its rights under this provision within one year following final payment of the Funds.

## **ARTICLE 7 – PERSONNEL**

- (a) All of the Services herein shall be performed by Contractor or under its supervision, and all personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under applicable state and local law to perform such Services.
- (b) Contractor and any of its employees performing Services hereunder shall comply with the Jessica Lunsford Act effective September 1, 2005, as same may be amended from time to time. Non-instructional school SBOC employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds must meet level 2 screening requirements as described in Section 1012.32, Florida Statutes. For purposes of this Agreement contractual personnel shall include any vendor, individual, or entity under Agreement with SBOC. The cost of the required screening is at the expense of Contractor.
- (c) Contractor shall notify SBOC as soon as possible, but no later than five (5) working days, after any changes in address or key personnel positions of Contractor's account team. Changes in key personnel may include resignations, approved leaves of absence of six (6) weeks or more, or terminations. Such notification shall be in writing and shall include information related to replacement staff assigned. Contractor agrees to work closely with SBOC to ensure that the work and cooperation between the two organizations is efficient and mutually productive to both parties.
- (d) Contractor and all Contractor staff under this Agreement shall comply with all federal, state, county, and city laws, ordinances, rules, and regulations that relate to the background screening process of those applying for work with children, seniors, or the disabled. In addition, all Contractor staff contributing to the delivery of the scope of Services that meet the criteria of both Chapter 408 and Chapter 435 and Section 110.1127, Florida Statutes, and Section 65C-14.025, Florida Administrative Code, must be in compliance with these Florida laws, and are required, at a minimum, but may not be limited, to perform the following screenings prior to supervision and /or direct care at no additional cost to SBOC:
  - (i) An initial Level 2 background screening, and
  - (ii) Additional Level 2 background screenings at five (5) year intervals.

## **ARTICLE 8 - FEDERAL AND STATE TAX**

- (a) SBOC is exempt from federal and state taxes for tangible personal property. Contractor shall not be exempted from paying applicable sales tax to the State of Florida and/or the federal government, as the case may be, for the purchase of materials to fulfill contractual obligations with SBOC, nor shall Contractor be authorized to use SBOC's tax exemption number in securing such materials.
- (b) In the event Contractor is also exempt from federal and state taxes for tangible personal property, it shall promptly submit to SBOC an appropriate exemption certificate. SBOC will sign an exemption certificate submitted to it by Contractor.
- (c) Contractor shall be responsible for payment of its own FICA and social security benefits with respect to this Agreement.

## **ARTICLE 9 - DOCUMENTATION AND REPORTING**

- (a) In the performance of this Agreement, Contractor shall maintain books, records, and accounts of all activities in compliance with standard accounting procedures.
- (b) **Documentation.** Documentation in connection with the description of the Services as set forth in Exhibit "A" attached hereto shall be provided upon request.
- (c) **Reporting.** Contractor shall provide report containing requested data in the requested format in a timely manner as defined by SBOC.

## **ARTICLE 10 – INSURANCE**

At its sole expense, Contractor shall maintain the following insurance during the term of this Agreement and such insurance will apply to Contractor, its employees, agents, and subcontractors:

- (a) Workers Compensation insurance in statutory amounts and Employers Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all Contractor's employees who will be engaged in the performance of the Services in this Agreement.
- (b) Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Orange County, Florida, its board members, employees, and representatives as additional insured.

- (c) Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in this Agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Orange County, Florida, its board members, employees, and representatives as additional insured.
- (d) Professional Liability insurance for any and all claims as a result of an action, lack of action, error or omission by Contractor, its employees or subcontractors in an amount not less than One Million Dollars (\$1,000,000) each claim. If such policy is written on a "claims-made" basis, coverage shall remain in effect for three (3) years after the expiration or termination of this Agreement and any of its extensions.
- (e) Contractor agrees to the following as it relates to all above required insurance:
  - (i) All insurance shall be written with an insurance company licensed to issue insurance in the State of Florida and shall maintain an A.M. Best financial strength rating of A (VI).
  - (ii) All insurance shall be primary and not contributory to any other insurance carried by The School Board of Orange County, Florida. This shall also apply to any self-insurance maintained by the School Board of Orange County, Florida.
  - (iii) Contractor shall notify SBOC's Risk Management Department within thirty (30) days of any material changes or notice of cancellation Contractor received from its insurer on above required insurance.
  - (iv) Contractor shall provide evidence of all insurance in the form of a Certificate of Insurance (Acord) and specify any deductible or retention applicable to above required insurance.
  - (v) Contractor agrees that proof of insurance shall be provided prior to execution of this Agreement and that no Services shall begin until proof of insurance is received by SBOC. Receipt of proof of insurance shall not be construed as an approval of Contractor's insurance or a release or waiver of Contractor's obligation to provide insurance required in this Agreement.
  - (vi) To the extent permitted by law, Contractor's insurance shall contain a waive rights to recover from SBOC or its insurance.
  - (vii) Any required insurance that Contractor self-insures or carries retentions in excess of Ten Thousand Dollars (\$10,000) shall be pre-approved by SBOC's Risk Management Department and referenced in an addendum to this Agreement.

#### **ARTICLE 11 - TIME OF ESSENCE**

Time is of the essence concerning the performance of all terms and conditions of this Agreement.

#### **ARTICLE 12 - STANDARD OF CARE**

In providing Services under this Agreement, Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice by SBOC, Contractor will correct those Services not meeting such a standard.

#### **ARTICLE 13 – INDEMNIFICATION**

- (a) Contractor shall indemnify, defend, and hold harmless SBOC, its board members, employees, representatives from and against all claims, suits, actions, damages, losses, expenses, and/or a cause of action, including but not limited to, economic loss, reasonable attorneys' fees, and expenses, arising out of or in connection with this Agreement, provided that any such claims, suits, actions, damages, losses, expenses, and/or a cause of action, (i) is attributable to any person(s) claiming personal injury, bodily injury, sickness, disease, or death; or damage to tangible property of a third party including the loss of use, (ii) loss of Contractor's tools and equipment used in connection with this Agreement, and (iii) is caused or incurred in whole or in part by Contractor or any of its subcontractors, agents, or anyone directly or indirectly employed by contractor, subcontractor, agents, regardless if caused in part by SBOC. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from SBOC's sole gross negligence or intentional misconduct.
- (b) Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of SBOC's sovereign immunity protection and limitations of liability pursuant to Section 768.28, Florida Statutes. Any indemnity or assumption of liability by SBOC hereunder shall be subject to SBOC's rights to sovereign immunity and any other limitations of liability provided SBOC pursuant to Florida law.

#### **ARTICLE 14 - SUCCESSORS AND ASSIGNS**

SBOC and Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other Party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither SBOC nor Contractor shall assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of SBOC, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than SBOC and Contractor.

#### **ARTICLE 15 – GOVERNING LAW AND REMEDIES**

- (a) This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary arising out of the Agreement will have its venue in Orange County and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or 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 further exercise thereof.
- (b) If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

#### **ARTICLE 16 - CONFLICT OF INTEREST**

Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder, as provided for in Section 112.311, Florida Statutes. Contractor further represents that no person having any interest shall be employed for said performance of services. Contractor shall promptly notify SBOC in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstances which may influence or appear to influence Contractor's judgment or quality of Services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstances and the nature of work that Contractor may undertake. Contractor shall request an opinion by SBOC as to whether the association, interest, or circumstance would, in the opinion of SBOC, constitute a conflict of interest if entered into by Contractor. SBOC agrees to notify Contractor of its opinion by certified mail within thirty (30) calendar days of receipt of notification by Contractor. If, in the opinion of SBOC, the prospective business association, interest, or circumstance would not constitute a conflict of interest by Contractor, SBOC shall so state in its response, and Contractor may, at its option, enter into said association, interest, or circumstance and it shall be deemed not a conflict of interest with respect to the Services provided to SBOC by Contractor under the terms of this Agreement. If SBOC, in its sole discretion, determines that there is a conflict, Contractor shall not enter into or if already entered into, will immediately terminate such arrangement or Agreement with the subject business associate.

#### **ARTICLE 17 - INDEPENDENT CONTRACTOR RELATIONSHIP**

- (a) Contractor is, and shall be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of SBOC. All persons engaged in any of the work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to Contractor's sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects to Contractor's relationship and the relationship of its employees to SBOC shall be that of an independent contractor and not as employees or agents of SBOC. Contractor does not have the power or authority to bind SBOC in any promise, agreement, or representation.
- (b) Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant among the Parties or any affiliate thereof, or to provide any Party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other Party.

#### **ARTICLE 18 – ARREARS**

Contractor shall not pledge SBOC's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

#### **ARTICLE 19 – CONFIDENTIAL INFORMATION AND DISCLOSURE OF DOCUMENTS**

- (a) Contractor shall deliver to SBOC for approval and acceptance, and before eligible for final payment of any amounts due, all documents and materials prepared by Contractor for SBOC under this Agreement.

- (b) All SBOC written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by SBOC at its expense will be kept as Confidential Information by Contractor and will not be disclosed to any other party, directly or indirectly, without SBOC's prior written consent unless required by a lawful order of court. All drawings, maps, sketches, and other data developed or purchased under this Agreement or at SBOC's expense shall be and remains SBOC's property and may be reproduced and reused at the discretion of SBOC. As requested, SBOC shall comply with the provisions of Chapter 119, Florida Statutes.
- (c) The Party receiving Confidential Information will not at any time disclose to any person or entity (including, without limitation, any member of the media) or use for its own benefit or the benefit of anyone, Confidential Information of the other Party without the prior written consent of said Party. Neither Party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court, authorized agency of government, or in compliance with Chapter 119, Florida Statutes.

#### **ARTICLE 20 - CONTINGENT FEES**

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

#### **ARTICLE 21 - ACCESS AND AUDITS**

Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least seven (7) years after completion of this Agreement. SBOC or its duly authorized representatives shall have access to such books, records, and documents as required in this section for the purpose of inspection, audit, excerpts, and transcription during normal business hours, at SBOC's cost, upon five (5) days' written notice.

#### **ARTICLE 22 – NONDISCRIMINATION**

Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, or expression, and genetic information or any other category of persons protected pursuant to Florida law.

#### **ARTICLE 23 – SURVIVAL**

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The insurance and indemnity provisions set forth in the Agreement shall survive the termination of the Agreement.

#### **ARTICLE 24 – AUTHORITY**

Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

#### **ARTICLE 25 - COMPLIANCE WITH LAWS**

Contractor agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations as well as applicable SBOC policies and OCPS regulations, rules, and guidelines in connection with the Services to be provided hereunder, including without limitation SBOC policy KCE, Lobbying and Ethics. SBOC agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations in connection with the Services to be provided hereunder.

#### **ARTICLE 26 – SEVERABILITY**

If any terms or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, such term or provision shall be stricken and deemed unenforceable and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

#### **ARTICLE 27 - NAMES; TRADEMARKS**

Contractor shall acquire no rights under the Agreement to, and shall not use, the name of SBOC or the name of "Orange County Public Schools" or "OCPS" either alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, "SBOC Marks") in any of Contractor's advertising, publicity, or promotion; to express or imply any endorsement by SBOC or Orange County Public Schools of its Services; or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by SBOC, except as expressly permitted herein. No advertisement, publication, or other use of SBOC Marks shall be published or otherwise promulgated by Contractor without SBOC's prior inspection and written approval. This clause shall survive the expiration or sooner termination of this Agreement.

## **ARTICLE 28 - PROTECTION AND HANDLING OF DATA**

- (a) **Data Confidentiality** - Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to SBOC or an individual identified with the data or information in Contractor's custody.
- (b) **Compliance with Laws and SBOC Policies and Procedures** - Contractor will not knowingly permit any Contractor's personnel to have access to any SBOC facility or any records or data of SBOC if the person has been convicted of a crime in connection with (i) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. §1829(a); or (ii) a felony. Contractor must, to the extent permitted by law, conduct a check of public records in all of the employee's states of residence and employment for at least the last five (5) years in order to verify the above. Contractor shall assure that all contracts with subcontractors impose these obligations on the subcontractors and shall monitor the subcontractors' compliance with such obligations. No subcontractors may be used without prior written consent of SBOC.
- (c) **FERPA** - To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, Florida Statutes (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.
- (d) **HIPAA, CIPA, and GLBA** - Contractor also agrees to comply with all applicable state and federal laws, regulations, and SBOC policies including Privacy Rights of Students, Computer Users' Responsibilities, Security of Computing Resources, Security of Data, Privacy of Computing Resources, Health Information Privacy and Accountability Act (HIPAA), Children Internet Protection Act (CIPA), and the Gramm-Leach Bliley Act (GLBA).
- (e) **Data Security** – Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, etc.) Likewise, SBOC agrees to conform to the following measures to protect and secure data:
  - (i) **Data Transmission.** Contractor agrees that any and all transmission or exchange of system application data with SBOC and/or any other parties shall take place via secure means, e.g. HTTPS, FTPS, SFTP, or equivalent.
  - (ii) **Data Storage and Backup.** Contractor agrees that any and all SBOC data will be stored, processed, and maintained solely on designated servers and that no SBOC data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an SBOC officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the SBOC Chief Information Security Officer for any general or specific case.
  - (iii) Contractor agrees to store all SBOC backup data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key.
  - (iv) **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. As required by Federal law, Contractor further agrees that no SBOC data of any kind shall be revealed, transmitted, exchanged, or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by an SBOC officer with designated data, security, or signature authority.
- (f) **End of Agreement Data Handling** - Contractor agrees that upon termination of this Agreement it shall return all data to SBOC in a useable electronic form, and erase, destroy, and render unreadable all SBOC data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within thirty (30) days of the termination of this Agreement or within seven (7) days of the request of an agent of SBOC, whichever shall come first.
- (g) **Data Breach** - Contractor agrees to comply with the State of Florida Database Breach Notification process and all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to notify SBOC immediately and assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless, and defend SBOC and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

- (h) **Mandatory Disclosure of Protected Information** - If Contractor becomes compelled by law or regulation (including securities laws) to disclose any Protected Information, Contractor will provide SBOC with prompt written notice so that SBOC may seek an appropriate protective order or other remedy. If a remedy acceptable to SBOC is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
- (i) **Remedies for Disclosure of Confidential Information** – Contractor and SBOC acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage SBOC in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give SBOC the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants SBOC the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
- (j) **Safekeeping and Security** - As part of the Services, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, and similar security codes and identifiers issued to Contractor's employees, agents, or subcontractors. Contractor agrees to require its employees to promptly report a lost or stolen access device or information.
- (k) **Non-Disclosure** – Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants, and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to Contractor and SBOC.
- (l) **Request for Additional Protection** - From time to time, SBOC may reasonably request that Contractor protect the confidentiality of certain Protected Information in particular ways to ensure that confidentiality is maintained. Contractor has the right to reasonably decline SBOC's request.

#### **ARTICLE 29 - NON-EXCLUSIVE AGREEMENT**

The Parties understand and agree this Agreement is a non-exclusive agreement and the Parties hereto may participate in other comparable services to and from any other person or entity.

#### **ARTICLE 30 - ENTIRETY OF AGREEMENT**

SBOC and Contractor agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the Parties, that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto.

#### **ARTICLE 31 – OTHER CONDITIONS**

- (a) **Legal Authority** - It is understood that those signing this Agreement have the legal authority to enter into binding Agreements.
- (b) **Terms and Conditions** - This Agreement contains all the terms and conditions agreed upon by the Parties. Items incorporated by reference are physically attached hereto. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the Parties hereto.
- (c) **License and Permits** - Contractor shall obtain and possess throughout the term of this Agreement all licenses and permits required for its operations under Federal, Florida, and local laws and shall comply with all fire, health, and other applicable regulatory codes.
- (d) **Location** - All Service(s) shall be performed and located in appropriate settings that are convenient, safe, clean, and well maintained.
- (e) **Access** - SBOC agrees to provide full accessibility to property owned or leased by SBOC for Contractor's employees to perform Services as agreed upon herein. For software support, SBOC agrees to allow for secure, remote access to the system via internet-based tools such as WebEx or PCAnywhere or as outlined and agreed upon herein.
- (f) **Covenant Not-to-Hire** - Each Party agrees not to hire or attempt to hire employees of the other Party during the term and for a period of one (1) year after the term (including any renewal term) of this Agreement, without the express written consent of the other Party.



(g) **Public Entity Crime** - Pursuant to Section 287.133, Florida Statutes, the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with SBOC. When a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, it may not submit a bid, construction or the repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a provider, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**ARTICLE 32 - NOTICE**

All formal notices, proposed changes, and determinations between the Parties hereto including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by United States mail, postage prepaid, to the parties at the contact information listed below:

**THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**

Procurement Services  
6501 Magic Way, Building 100B  
Orlando, FL 32809

**CONTRACTOR:** \_\_\_\_\_

Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, SBOC has made and executed this Agreement and Contractor has made and executed this Agreement on the day and year above written.

**CONTRACTOR**

WITNESS (Contractor):

For Contractor:

By \_\_\_\_\_  
Date

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Name & Title (Type or Print)

\_\_\_\_\_  
Authorized Representative Signature Date

\_\_\_\_\_  
Name & Title (Type or Print)

**NOTARY PUBLIC**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by \_\_\_\_\_ who has produced a \_\_\_\_\_ as identification and who did (did not) take an oath.

Notary Name: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**

WITNESS (School Board):

For School Board Orange County, Florida:

By \_\_\_\_\_  
Date

By \_\_\_\_\_  
Michael A. Eugene, Chief Operations Officer Date

\_\_\_\_\_  
Name & Title (Type or Print)

Reviewed by: \_\_\_\_\_  
Lora, Gilbert, Sr. Director Date

**Exhibit "A"**  
**Scope of Services**

As defined in the attached solicitation entitled Walk-in Cooler/Freezer Units, ITB1505098

**Exhibit "B"**  
**Service Fees**

Item	Description	Turn Key Total Price
1	Bonneville ES Walk-in Cooler/Freezer Turnkey solution	\$
2	Liberty MS Walk-in Cooler/Freezer Turnkey solution	\$
<b>Total Turn Key Bid Price</b>		\$ _____



ORANGE COUNTY PUBLIC SCHOOLS

Procurement Services
Bid Price Sheet

Title: Synthetic Turf West Orange HS Football Field

Bid #: ITB1505100

Table with 3 columns: Item, Description, Turn Key Total Price. Item 1: Removal and replacement of synthetic turf at West Orange High School. Description includes scope of work and a list of 16 bullet points. Price column contains a dollar sign.

Total Turn Key Bid Price \$

OCPS Terms is Net 45 days as per \$218.73 Payment Discount Terms: % if paid in days

Can you meet 20 day service After Receipt of Order? (circle) Y or N If no, days needed

Vendor Acknowledgment and Approval

I certify that this bid is made without prior understanding, agreement or connection with any corporation, firm, or person submitting a bid for the same materials, supplies or equipment, and in all respects fair and without collusion or fraud. The following information, including an authorized representative signature and witness, is required to be submitted with your proposal in order to be considered for evaluation and award. The person signing below acknowledges and agrees with all proposed information as submitted and has the authorization of the said company to enter into a contractual agreement with the School Board of Orange County for the purposes as proposed and as described herein. Please print below unless where a signature is required.

Firm Name Phone No.

Authorized Rep. Signature Date

Authorized Rep. Name/Title

Witness Signature Date

Witness Name

FAILURE TO SUBMIT PAPER BID PRICE SHEET WITH SIGNATURES Will RESULT IN YOUR BID SUBMITTAL NOT BEING ACCEPTED.