

PREPARED BY AND RETURN TO:

Roy K. Payne, Esquire
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
407-246-3483

CONSTRUCTION AND MAINTENANCE AGREEMENT

This Construction and Maintenance Agreement, entered into this 8th day of December, 2016, by and between the **City of Orlando**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32802, (the "City"), and **Orange County Public Schools**, whose address is: 445 West Amelia Street, Orlando, FL, 32801, (the "School Board").

Recitals

WHEREAS, School Board is the owner of certain real property located at 750 S Rio Grande Ave, Orlando, Florida 32805, more particularly described in **Exhibit "A"**, attached hereto and made a part hereof by reference, (hereinafter referred to as "Property,") in the City of Orlando; and

WHEREAS, School Board operates Jones High School, "HS," on the Property; and

WHEREAS, City owns the Gore Street right-of-way, "Right-of-Way," adjacent to the Property, on which the City operates Gore Street; and

WHEREAS, in conjunction with the construction of improvements to the HS, School Board has requested that City permit School Board to convert an existing curb inlet to a grated inlet, along with attendant improvements, "Inlet," within the Right-of-Way and City has agreed on the condition that School Board assume maintenance responsibilities for the Inlet and other obligations described in this Construction and Maintenance Agreement.

WHEREAS, the area of the Right-of-Way necessary for construction and maintenance of the Inlet is referred to herein as the "Maintenance Area;" and

WHEREAS, the parties hereto desire to memorialize their agreement.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are true and correct and hereby incorporated into the substantive body of this Agreement.

2. Construction of Improvements. School Board, at its sole cost and expense, shall construct the Inlet, as shown in **Exhibit "B"**, consistent with reasonable engineering standards and all applicable laws, codes, and regulations, including City permits.

3. Maintenance of Improvements. School Board shall be solely responsible for maintaining the Inlet, and all costs associated therewith, in compliance with Florida Department of Transportation standards, City standards and all other applicable laws, rules and regulations.

School Board shall provide the City 48 hours written notice prior to conducting maintenance activities within the Maintenance Area.

4. Repairs. In the event of damage to City property, or any other property arising from School Board's, its contractor's, subcontractor's, agent's and assigns' activities under this Agreement, the School Board, at its sole cost and expense, must immediately undertake and complete repairs to said property. If the repairs are to a City facility, the plans that School Board prepares to repair the damage must be reviewed and approved in advance by the City and City must inspect and approve the completed repairs prior to the release of School Board from its repair obligation.

City has the right, but not the duty or obligation, to inspect the Inlet at any time. In the event School Board fails to construct or maintain the Inlet in good condition and in accordance with this Agreement, and applicable laws and regulations, the City may give School Board written notice thereof and School Board will conduct such repair or maintenance and correct such deficiency within a reasonable period of time designated in the Notice. In the event School Board fails to maintain the Improvements or correct any construction or maintenance deficiency within such designated time, then the City shall have the right, but not the obligation, to conduct such work and School Board will reimburse the City for its reasonable expenses in connection therewith, no less than sixty (60) days after written request by the City, failing which the full amount shall bear interest at the highest rate allowed by law. The City's conduct of remedial action under this Agreement shall not operate to impose any obligation, responsibility or liability whatsoever upon the City with respect to the construction, operation or maintenance of the Inlet.

5. City's Reliance. School Board acknowledges that City would not have permitted School Board to install the Inlet if not for the representations and obligations of School Board contained in this Agreement.

6. Removal. It is understood between the parties hereto that during the term of this Agreement, the City may direct, in the interest of the public health, safety and welfare, that the Inlet be removed, relocated or converted back to a curb inlet. School Board shall, at its sole cost, be responsible for the removal, relocation or conversion of the Inlet pursuant to said directive. School Board shall be given sixty (60) calendar days to remove, relocate or convert the Inlet, after which time the City may do so, without liability to School Board and School Board will reimburse the City for the costs thereof.

7. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

City: City of Orlando, Florida
400 South Orange Avenue
Orlando, FL 32801
Attn: City Engineer
Telephone: (407) 246-3222
Facsimile: (407) 246-2266

School Board: School Board
Orange County Public Schools
445 West Amelia Street
Orlando, FL 32801
Attn:
Telephone:
Facsimile:

With Copy to:

Orlando, Florida
Attn:
Telephone:
Facsimile:

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

8. Modification. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further Agreement in writing duly executed by the Parties and recorded in the Public Records of Orange County, Florida.

9. Successors and Assigns. The terms and conditions of this Agreement shall constitute covenants running with the land, and all rights and privileges granted herein shall be appurtenant to the lands herein described, and, except as hereinafter set forth, shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the Parties hereto and shall continue in perpetuity, unless otherwise modified in writing by the Parties hereto.

10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the Parties.

11. Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to payment of its costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

12. Relationship Between the Parties. Nothing contained in this Agreement, nor the relationship between the parties which may arise as a result of the provisions of this Agreement, are intended to, or shall be construed as, creating a partnership, joint venture, or other such relationship as between the Parties.

13. Section Headings. The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

14. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for

any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

15. Recording of Agreement. School Board shall be responsible for recording this Agreement (including all costs associated therewith) within the Public Records of Orange County, Florida and shall send a copy of said recorded Agreement to the City within 30 days of the execution of this Agreement.

16. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same instrument.

17. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

18. No Waiver/No Vesting. Nothing in this Agreement operates as a waiver of the City's regulatory authority or a vesting of rights.

19. Effective Date. This Agreement shall become effective upon full and complete execution by the parties hereto.

20. Payment & Performance Bonds. School Board shall require the contractor, for construction of the Inlet, to obtain performance and payment bonds, prior to commencement of construction of the Inlet and in a form acceptable to the City with the penal amount of each bond equal to the contract amount for the Inlet construction. The City shall be listed as an additional obligee on each bond. School Board shall act diligently to prevent construction liens from being filed and if a lien is filed, School Board shall immediately take the requisite action to have the lien removed.

21. Indemnification. As limited by Florida law and without waiving sovereign immunity, School Board shall indemnify, release and hold harmless the City, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), to the extent arising out of or resulting from School Board's construction, operation and maintenance of the Inlet.

22. Insurance. School Board shall at all times during the term of this Agreement, possess or require its contractor to possess: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3)

general liability insurance in the amount of at least \$5,000,000. All liability insurance shall be maintained throughout the course of the construction, installation and maintenance of the Improvements and for a period of time thereafter as required by the City in order to protect the City from any liability, claims, damages, losses or expenses arising from or out of or in any way connected with this Agreement, and construction, installation and maintenance of the Inlet. City shall be listed as additional insured on the automobile and general liability policies of insurance and each policy shall contain a contractual liability endorsement in favor of the City. School Board shall provide proof of such insurance coverages, as described above, ten (10) days prior to commencement of construction of the Inlet and ten (10) days prior to the commencement of maintenance of the Inlet, respectively. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of this Agreement. Nothing in this Agreement operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.

23. Warranty/Maintenance Bond. Upon completion of the Inlet, School Board shall obtain from the contractor for installation of the Inlet, a two-year warranty (in a form reasonably acceptable to the City) on the materials and work performed with regard to the Inlet. City shall be named as an additional beneficiary of the warranty/bond. The commencement date of the warranty/bond shall be the date upon which the Inlet is completed unless otherwise agreed by the parties.

24. Non-Conforming Work. In the event work is discovered, whether by the City or School Board, its consultants or contractors, which is defective or otherwise non-conforming to the requirements of this Agreement or applicable permits, the City or School Board, shall promptly notify the other party of such defect or non-compliance. School Board shall immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming to the satisfaction of the City. Any costs associated with correcting such deficient work shall be borne by School Board.

25. Certificate of Completion. Upon completion of the Inlet, the City will conduct a final inspection. If the City determines that all work has been completed in conformance with the City-permitted construction plans, this Agreement, any other applicable construction, permitting or engineering requirements, City shall notify School Board in writing. If the City determines that there are deficiencies in the Inlet construction or specifications, City will include said deficiencies in the Notice. School Board will correct said deficiencies at its cost, upon the

completion of which, City will reinspect. This process will be repeated until the Inlet is approved by the City. Upon receipt of the City's notice of approval of the Inlet, School Board shall cause the contractor for installation of the Inlet to submit a final completion certification of the Inlet to School Board and City. This certification shall be accompanied by the As-Built drawings as well as any necessary warranties, waivers and releases from contractors, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the City, if any. The City's approval under this subparagraph does not operate to impose any liability or responsibility on the City under this Agreement with respect to the Inlet, which remain the sole and exclusive responsibility of School Board.

26. Independent Contractors. School Board, its agents, contractor, subcontractors or design engineer, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City, or their employees or representatives. Nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the Improvements.

27. Coordination with City/Reports. School Board shall coordinate with the City during all phases of the construction and maintenance of the Inlet and shall incorporate the City's comments and concerns as much as reasonably practicable. City will be entitled at all times to be advised, at its request, as to the status of work being done by School Board and of details thereof. Either party to the Agreement may request and shall, within a reasonable time thereafter be granted a conference with the other party.

28. Termination. This Agreement may be terminated by mutual consent of the parties or upon a default by either party, after notice and a reasonable period to cure. In the event of termination by either party, School Board shall remove the Inlet and reestablish the Right-of-Way to its preexisting condition, unless the City directs otherwise, failing which, the City may do so and shall be entitled to recover the cost of removing the Improvements as provided in Paragraph 5, above.

29. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

30. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the Maintenance Area or any other property or right of way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
as of the date set forth above.

CITY OF ORLANDO, FLORIDA,
a municipal corporation

ATTEST:

By: _____
Mayor / Mayor Pro Tem

By: _____
Amy T. Iennaco, Interim City Clerk

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ____ day of _____, 2016
by _____, Mayor Pro Tem and _____, Interim City Clerk,
who is personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

Approved as to form and legality for the use
and reliance of the City of Orlando, Florida only

_____, 2016

By: _____
Chief Assistant City Attorney

SIGNATURES CONTINUE NEXT PAGE

Signed in the presence of Two Witnesses:



Signature

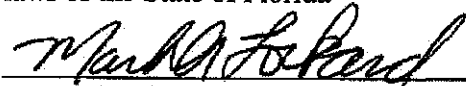
Print Name: ERIC MARTI



Signature

Print Name: GEORGE HACK

THE SCHOOL BOARD OF ORANGE
COUNTY, FLORIDA, a corporate body
organized and existing under the constitution
and laws of the State of Florida

By: 

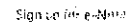
Name: Mark A. Lockard

Title: Senior Facilities Manager

Date: 11/08/2016

INSERT REST OF SIGNATURES BLOCK/NOTARY

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Citings



Update from: v2.3

Description	Date Built	Units	XFOB Value
THCT - Tennis Court	11/11/2010	3 Units(0)	working..
PMCH - Pav Co	11/11/2010	17320 Square Feet	working..
MSM - Parking Space	11/11/2010	34 Units(1)	working..
CMAL - Aluminum Co	11/11/2010	1409 Square Feet	working..
PMCT - Basketball Full Court	11/11/2010	2 Units(0)	working..

750 S Rio Grande Ave

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EXHIBIT "B"

