

# **NON-EXCLUSIVE TWO-YEAR CONTINUING CONTRACT BETWEEN OWNER AND DESIGN / BUILDER FOR ASSIGNED DESIGN/CONSTRUCTION PROJECTS**

This contract is made as of the **18<sup>th</sup>** day of **January** in year **Two Thousand Twenty-Two**

Between the Owner	<b>School Board of Sarasota County</b> 1960 Landings Boulevard Sarasota, FL 34231
and the Design/Builder (DB)	<b>Willis A. Smith Construction</b> 5001 Lakewood Ranch Boulevard North Sarasota, FL 34240
The Architect is	<b>Fawley Bryant Architecture</b> 5391 Lakewood Ranch Boulevard North Suite 300 Sarasota, FL 34240

The Owner and Design / Builder agree as follows:

## **RECITALS**

WHEREAS, the Owner desires to contract with **Seven (7)** Design-Build Firms on a non-exclusive continuing contract basis for the providing of design-build services for Owner-assigned minor design/construction projects where the construction costs for each such assigned design/construction project (hereinafter referred to as a "subproject") do not exceed **Four Million Dollars: \$4,000,000.00**, or for study activity when the fee for professional services for each individual study assigned pursuant to this Agreement (hereinafter referred to as "study activity") does not exceed **Five Hundred Thousand Dollars: \$500,000.00**:

WHEREAS, the Owner is authorized under Florida law to enter into such continuing contracts and has chosen, pursuant to Florida Statute 287.055(9)(c), to use a qualifications based selection process in accordance with Florida Statute 287.055(3),(4) and (5) and School Board Policy 7.71, to select the design-build entities which will be contractually available to provide the necessary professional services;

WHEREAS, the DB was one (1) of the entities chosen by the School Board of Sarasota County Professional Services Selection Committee and the Owner and DB desire to enter into this Contract to memorialize the terms under which DB will be available to be assigned and provide design-build services on Owner-assigned subprojects, and, if necessary, study activity, during the term of this Contract;

WHEREAS, DB acknowledges that other design/build entities have also been selected to be assigned and to provide design-build services on Owner-assigned subprojects, and, if necessary, study activity and that the Owner has the absolute discretion to designate which subprojects will be assigned to a particular design-build entity;

In consideration of the mutual covenants contained herein, the Owner and Design/Builder agree as follows:

## **ARTICLE 1** **TERM OF AGREEMENT AND RIGHT TO TERMINATE**

**1.1** Subject to the Owner's right of termination contained in paragraph 1.2, this Contract is valid for a period of two (2) years **beginning January 22, 2022 and ending January 21, 2024**. This Contract shall terminate and

expire at the end of such two-year period. **This Contract, at the Owner's discretion, may be extended for an additional one-year period, by Owner giving written notice to DB of Owner's intent to so extend within at least thirty (30) calendar days prior to the expiration of the two-year period.**

**1.2** This Contract may be terminated by the Owner, with or without cause, at any time, by Owner providing the DB with thirty (30) days' notice of such termination in writing. Termination of this Contract by the Owner shall not terminate any contractual agreement Owner and DB may have with respect to a particular subproject or study activity which had previously been assigned to DB unless the notice of termination so provides.

**1.3** This Contract represents the entire agreement between the Owner and the DB as to the scope of services contemplated by this Contract and supersedes all prior negotiations, representations or agreements. However, upon the Owner's election to accept the DB's proposal for an assigned subproject, or for a study activity, pursuant to Article 2, Owner and DB will enter into a subsequent contract, which will supersede this contract as to that particular subproject or study activity. If the Owner elects to reject the DB's proposal for any particular subproject or study activity, the Owner may, at its sole discretion, assign the subproject or study activity to another design-build firm who has similarly contracted with the Owner pursuant to a non-exclusive continuing contract, or place the subproject for either competitive bidding pursuant to Florida Statute 287.057 or competitive selection pursuant to Florida Statute 287.055, 1013.45 and School Board Policy 7.71, as may be determined by Owner.

**1.4** DB acknowledges and understands that as part of its services under this Contract, it may be required to have access to property owned by the Owner, which property may at various times during its services be occupied by students, teachers, parents and school administrators. Accordingly, in order to secure the property, and otherwise comply with applicable law, the DB agrees to the following provisions and also agrees that the failure to comply with any of these provisions may result in the termination of this Contract;

**1.4.1 Unauthorized Aliens.** Owner considers the employment of unauthorized aliens by the DB, or any of its subcontractors, a violation of Section 274A of the Immigration and Naturalization Act. If it is determined that an unauthorized alien is working on the property, the DB shall take all steps necessary to remove such unauthorized alien from the property. Owner shall have the right to terminate this Contract if the DB does not comply with this provision.

**(1) E-Verify.**

**As of January 1, 2021, pursuant to Section 448.095, Florida Statutes, Contractor shall register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all employees hired during the term of this Agreement and must, upon request, provide evidence of compliance with this provision.**

**(2) Subcontractors**

**(i) As of January 1, 2021, Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.**

**(ii) Subcontractors shall provide Contractor with an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as stated in Section 448.095, Florida Statutes.**

**(iii) Contractor shall provide a copy of such affidavit to the School Board upon receipt and shall maintain a copy for the duration of the Agreement.**

**(3) Failure to comply with this provision is a material breach of the Agreement, and School Board may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with School Board securing the same services,**

**inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).**

**1.4.2 Possession of Firearms.** Possession of firearms will not be tolerated on any subproject or the Owner's property. No person who has a firearm in their vehicle may park their vehicle on the Owner's property. Furthermore, no person may possess or bring a firearm on School District property. If any employee/independent contractor of the DB, or any of its sub-contractors, is found to have brought a firearm on to the Owner's property, said employee/independent contractor shall be removed and terminated from the property by the DB. If a sub-contractor fails to terminate said employee-independent contractor, the DB shall terminate its agreement with the sub-contractor. If the DB fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee-independent contractor, this Contract may be terminated by the Owner. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive devise, or any machine gun. Powder actuated construction nailers and fasteners are excluded from this definition.

**1.4.3 Criminal Acts.** Employment for any services by DB, or of its sub-contractors, of any employee, or independent contractor, with any prior convictions of any crimes against children, crimes of violence or crimes of moral turpitude will not be tolerated. If it is determined that any person with such criminal history is on the Owner's property, the DB agrees to take all steps necessary to remove such person from the property. Owner shall have the right to terminate this Contract if the DB does not comply with this provision.

**1.4.4 Sexual Predators/Sexual Offenders.** In order to ensure that no sexual predators or sexual offenders are working on the Owner's property, DB shall perform a query of all its employees/independent contractors working on Owner's property, and require all of its sub-contractors to perform a query of their employees/independent contractors working on the Owner's property, against the Florida Department of Law Enforcement Sexual Predator/Offender Registry ([www.fdle.state.fl.us](http://www.fdle.state.fl.us)). Any person who is on the Sexual Predator/Offender Registry shall not be allowed on the Owner's property, and DB shall immediately remove such person from the property. DB shall, upon request by the Owner, provide evidence that such queries have been done on all personnel working on the Owner's property. Owner shall have the right to terminate this Contract if the DB of any sub-contractor, does not comply with this provision.

**1.4.5 Possession/Use/Under the Influence of Mind Altering Substances.** Possession/use and/or being under the influence of any legal or illegal mind altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, or made illegal under Federal law, by DB's employees/independent contractors or its sub-contractors' employees/independent contractors will not be tolerated on the Owner's property. If any employee/independent contractor is found to have brought and/or used or is under the influence of any legal or illegal mind altering substances as described above on the Owner's property, said employee/independent contractor shall be removed and terminated by the DB. If a sub-contractor fails to terminate said employee/independent contractor, the DB shall terminate its agreement with the sub-contractor. If the DB fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor, the Contract may be terminated by the Owner.

**1.4.6 Background Screening Requirements.** DB agrees that before any of its employees, agents or sub-consultants will be permitted on school grounds while students are present, such employees, agents or sub-consultants will be fingerprinted and have their backgrounds checked as provided by Florida law. DB's employees, agents and sub-consultants will coordinate with the Owner to arrange a mutually convenient time for the Owner to conduct the fingerprinting. DB agrees to bear the cost of the fingerprinting/background checks. The Owner has the right to refuse entry onto any school grounds to any individual whose background check does not meet the requirements established by the Owner pursuant to Florida law.

**FINGERPRINTING AND BADGE RENEWAL:** <https://www.sarasotacountyschools.net/Page/2414>

**To schedule a fingerprinting appointment for Contractors/ Vendors**  
COVID-19 update: Contractors/Vendors must have an appointment in order to get fingerprinted. To make an appointment [click here](#). Please print and fill out the application form and bring to your appointment. If you need assistance, please send an e-mail to: [scsbfingerprinting@sarasotacountyschools.net](mailto:scsbfingerprinting@sarasotacountyschools.net).

## **ARTICLE 2**

### **DESIGN / BUILDER'S SERVICES**

**2.1** The DB's services under this Contract are limited to either providing professional services for study activities or for providing proposals for design/preconstruction and construction services for assigned subprojects.

**2.1.1. Study Activity Professional Services:** The Owner may assign to the DB projects which consist of preparing study, feasibility, and/or estimates for minor or major projects, which may or may not include construction activities. Prior to beginning any such assignment, DB agrees to provide Owner with a detailed proposal for such work and shall not begin such work until Owner approves the proposal and Owner and DB enter into a contract for such work.

**2.1.2 Design/Preconstruction and Construction Services for Assigned Subprojects:** No later than thirty (30) days after receiving notice of assignment of a particular design/build subproject by the Owner, the DB shall provide to the Owner a detailed proposal for all design/preconstruction and/or construction work required for the particular subproject.

**.1** Within thirty (30) days of the Owner's receipt of the DB's detailed proposal, the Owner will have the option, in its sole discretion, to either reject or accept the DB's proposal. In evaluating the DB's proposal, the Owner may consider all factors and terms of the proposal, and is not limited solely to considering the amount of the proposal.

**.2** If the DB's proposal is accepted by the Owner, a contract will be executed relating to the particular subproject and the relationship between Owner and DB as to that particular subproject shall thenceforth be governed by the terms of that contract.

**.3** If the DB's proposal is rejected by the Owner within the time period referenced in Article 2.1.2.1, the Owner and DB agree that the DB will be given an opportunity within fourteen (14) days after the Owner's rejection, to meet with the Owner's representative to discuss the basis of the rejection of the proposal and to revise the proposal to obtain the Owner's approval. However, nothing contained in this Contract shall require the Owner to accept any of the DB's proposals. Further, the DB agrees that the Owner has the unrestricted discretion to reject the DB's proposals if, based on the Owner's opinion and judgment, the rejection of the proposals is in the Owner's best interest.

**.4** The Owner's failure to specifically notify the DB of the Owner's decision not to accept the DB's proposal shall not be construed as the Owner's implicit acceptance of the proposal. Rather, in order for the DB's proposal to be accepted, the Owner must so specify such acceptance, in writing. The Owner's failure to so notify the DB of the acceptance within said time period shall constitute a rejection of the DB's proposals.

**.5** DB agrees, notwithstanding any other provisions to the contrary, that should the Owner reject the DB's proposal, the Owner has the discretion, but not the obligation, to assign the subproject to another design-build firm who has similarly contracted with the Owner pursuant to a non-exclusive continuing contract, or to place out the particular subproject for either competitive bidding pursuant to Florida Statute 287.057 or competitive selection pursuant to Florida Statute 287.055, 1013.45 and School Board Policy 7.71, as may be determined by Owner. Owner agrees

that if competitive bidding or selection occurs, nothing in this Contract restricts the DB from bidding on the subproject along with all other qualified bidders.

### **ARTICLE 3**

#### **OWNER'S RESPONSIBILITIES**

**3.1** The Owner shall designate a representative to act on its behalf as to each subproject, or study activity, assigned in accordance with this Contract. This representative, or his/her designee, will monitor the progress of the Work, serve as liaison with the DB, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the subproject or study activity. The DB will be notified in writing of the representative and of his/her designee or any changes thereto.

**3.2** The Owner shall provide the DB with a proposed budget for each subproject that may be mutually adjusted throughout the subproject.

**3.3** Notwithstanding anything herein to the contrary, the Owner shall make all final decisions regarding matters relating to each subproject or study activity.

### **ARTICLE 4**

#### **PAYMENTS TO DESIGN / BUILDER**

**4.1** Notwithstanding anything herein to the contrary, DB agrees that it shall receive no payment, compensation, or reimbursement for preparing, submitting or seeking Owner approval for any proposal required under the terms of this Contract. DB further agrees that its right to payment, if any, for design/build services for any particular subproject, or for any professional services provided for a study activity, shall be governed by the specific contract for that subproject or study activity and that this Contract shall provide no basis or right to such payment.

**4.2** Notwithstanding the second sentence of paragraph 4.1 above, DB agrees that for any individual contracts which may be entered into for Owner assigned individual subprojects, but not for any study activity, its percentage Design/Builder Fee for design/build services projects shall be controlled and determined by the following schedule which shall be dependent on the Cost of Work for each individual subproject:

<b><u>Cost of Work</u></b>	<b><u>D/B Fee</u></b>
<b>\$0 - \$250,000</b>	<b>14%</b>
<b>\$250,001 - \$500,000</b>	<b>12%</b>
<b>\$500,001 - \$1,000,000</b>	<b>8%</b>
<b>\$1,000,001 - \$2,000,000</b>	<b>7%</b>
<b>\$2,000,001 - \$3,000,000</b>	<b>6.5%</b>
<b>\$3,000,001 - \$4,000,000</b>	<b>5.5%</b>

### **ARTICLE 5**

#### **DISPUTE RESOLUTION**

**5.1** This Contract shall be governed by the laws of the State of Florida. Sole and exclusive jurisdiction and venue of any action brought under or arising from this Contract shall be in the Twelfth Judicial Circuit or County Court in and for Sarasota County, Florida.

**5.2** Unless a delay in initiating or prosecuting a claim, dispute or other matter in question between the DB and the Owner arising out of or relating to this Contract would irrevocably prejudice the Owner or the DB, any such matter which is not resolved by direct discussions between the parties shall be submitted to mediation under the Florida Rules of Civil Procedure or such other rules as the parties may promptly agree to employ, before recourse to litigation. The Owner and DB shall, within ten (10) days of the request of either party for

mediation, agree in writing as to the identity of the mediator. If the parties do not agree, the Director of Construction Services for the Owner shall designate a mediator from the list of approved mediators for the Twelfth Judicial Circuit in and for Sarasota County, Florida.

**5.3** The parties agree to conduct and conclude mediation proceedings under this Article within thirty (30) days from the initiation of same by request of one of the parties. In the event that such proceedings have not been successfully concluded with such period, either party shall have the right to initiate further dispute resolution proceedings including litigation.

**5.4** Provided the parties comply with the requirement of this Contract for providing notice of the existence of a claim or dispute, no delay in disposing of such claim or dispute while the parties pursue resolution as provided in this Article shall prejudice the rights of either party; however, nothing contained in this Article shall be deemed to relax any requirement for the giving of notice between the parties.

## **ARTICLE 6**

### **MISCELLANEOUS PROVISIONS**

**6.1** DB agrees to defend, indemnify and hold harmless the Owner, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the DB or other persons employed or utilized by the DB in the performance of this Contract.

**6.2** The Owner and DB respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the Owner nor the DB shall assign this Agreement without the written consent of the other.

**6.3** The DB warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the DB) to solicit or secure this Contract, 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 the DB) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

**6.4** As required by Section 287.058, Florida Statutes, this Contract may be unilaterally canceled by the Owner for refusal by the DB to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the DB in conjunctions with this Contract.

**6.5** DB shall comply with Florida's Public Records Law including:

a) keeping and maintaining public records that ordinarily and necessarily would be required by the Owner in order to perform the service;

b) providing the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

c) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

d) meeting all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of DB upon termination of the Agreement 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 Owner in a format that is compatible with the information technology systems of the Owner.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first written above.

**SCHOOL BOARD OF SARASOTA COUNTY**

**WILLIS A. SMITH CONSTRUCTION, INC.**

BY: \_\_\_\_\_  
Jane Goodwin, Board Chair

BY: \_\_\_\_\_  
Nathan T. Carr  
Its \_\_\_\_\_  
VicePresident

Approved for Legal Content: 1/1/2021  
Shumaker Attorney for Sarasota County Schools  
Signed: PD

[SCS/CSD Use Only](#)  
Reviewed & Approved for Board Chair Signature

CSD PM / Date \_\_\_\_\_

CSD/D / Date: \_\_\_\_\_