



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

7720 West Oakland Park Boulevard • Sunrise, Florida 33351 • Tel: 754-321-0505 • Fax: 754-321-0936

Procurement & Warehousing Services
Mary Catherine Coker, Director
www.browardschools.com

**The School Board of
Broward County, Florida**

Abby M. Freedman, Chair
Nora Rupert, Vice Chair

Robin Bartleman
Heather P. Brinkworth
Patricia Good
Donna P. Korn
Laurie Rich Levinson
Ann Murray
Dr. Rosalind Osgood

Robert W. Runcie
Superintendent of Schools

July 5, 2017

AmeriGas Propane, Limited Partnership
460 North Gulf Road
King of Prussia, PA 19406

**RE: 17-146R – LPG/Propane Supply and Fueling
Dispensers Services**

To Whom It May Concern:

Attached is the executed Agreement between The School Board of Broward County, Florida (SBBC) and AmeriGas Propane, Limited Partnership. This is the result of the School Boards approval on June 13, 2017, for item EE-31. Full details are outlined in this Agreement.

In accordance with the attached executed Agreement between The School Board of Broward County, Florida (SBBC), throughout the term of the agreement AmeriGas Propane, Limited Partnership, will take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified Minority/Women Business Enterprise (M/WBE) vendors who may be engaged to fulfill various aspects of the Agreement. Such aspects include, without limitation, providing office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, and medical supplies where feasible.

AmeriGas Propane, Limited Partnership, agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE vendors for the quarter; and to continue to access throughout the term of the Agreement new possibilities for M/WBE vendor participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

Should you have any questions, please contact Colleen M. Robbs, Coordinator, Supplier Diversity & Outreach Program at 754-321-0505.



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

The School Board of
Broward County, Florida

Sincerely,

Mary Catherine Coker, Director
Procurement & Warehousing Services

MCC: rr

Attachments

CC: Ms. Patricia Snell, Director, Transportation and Fleet Services
Mr. Aston Henry, Director, Risk Management
Mr. Luis Perez, Contractor, Program Management
Ms. Colleen Robbs, Coordinator, Supplier Diversity & Outreach Program



The School Board of Broward County, Florida
Supplier Diversity & Outreach Program
7720 W. Oakland Park Blvd., Suite 323
Sunrise, FL 33351
(754) 321-0505 ~ Fax (754) 321-0534

Monthly M/WBE Subcontractor Utilization Report

The timing of the reports must coincide with invoice submission, whether the M/WBE(s) received payment or not, until all committed remuneration has been received by the M/WBE vendor.

Reporting Period From: _____ Reporting Period To: _____

This report is required by The School Board of Broward County, Florida. The prime vendor shall maintain the level of M/WBE utilization as established in the M/WBE Utilization Plan, agreement, or any subsequent amendments. The M/WBE Utilization Report shall include all Work under the contract agreement, including amendments, change orders, and work orders. Failure to comply with the M/WBE requirements of this contract agreement will be considered a material breach of contract agreement.

PRIME VENDOR INFORMATION

NAME & ADDRESS OF PRIME VENDOR:	CONTRACT AMOUNT (if applicable)	LENGTH OF CONTRACT	CONTRACT START DATE	CONTRACT END DATE	TOTAL % TO MINORITY/ WOMEN
Bid Number:					
Bid Title:					

M/WBE VENDOR INFORMATION

NAME OF CERTIFIED M/WBE VENDOR	WORK DESCRIPTION	CONTRACT AMOUNT	AMOUNT PAID TO VENDOR	AMOUNT PAID TO DATE	% OF TOTAL PAID TO CONTRACT AMOUNT

Company Official's Signature: _____
(Signature)

Printed Name: _____ Title: _____

Phone #: (_____) - _____ Email: _____

Date: _____



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

EE-31.

MEETING DATE

Jun 13 2017 10:05AM - School Board Operational Meeting

AGENDA ITEM

ITEMS

CATEGORY

EE. OFFICE OF STRATEGY & OPERATIONS

DEPARTMENT

Procurement & Warehousing Services

Special Order Request

☐ Yes

☒ No

Time

Open Agenda

☒ Yes

☐ No

TITLE:

Recommendation of \$500,000 or Greater - 17-146R - LPG/Propane Supply and Fueling Dispensers Services

REQUESTED ACTION:

Approve the recommendation to award for the above Request for Proposal (RFP). Contract Term: June 14, 2017, through June 13, 2022, 5 Years; User Department: Student Transportation & Fleet Services; Award Amount: \$9,130,725; Awarded Vendor(s): AmeriGas Propane, L.P.; Minority/Women Business Enterprise Vendor(s): None

SUMMARY EXPLANATION AND BACKGROUND:

The School Board of Broward County, Florida, requested proposals for the supply of propane and the infrastructure of three (3) permanent on-site fueling stations. This will be a five (5) year contract including the supply of propane for the fleet as well as the mentioned infrastructure of three (3) fueling dispenser service facilities located in north, central, and south transportation areas. The District has a fleet of 135 propane-fueled buses with a projection of adding forty-five (45) additional units for the next five (5) years beginning in the fiscal year 2017/18. The District is currently using a mobile fueling contract to fuel the fleet of propane-fueled buses. This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:

☐ Goal 1: High Quality Instruction ☒ Goal 2: Continuous Improvement ☐ Goal 3: Effective Communication

FINANCIAL IMPACT:

The estimated financial impact to the District will be \$9,130,725. The funding source will come from the Student Transportation & Fleet Services department's operating fuel budget. The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

EXHIBITS: (List)

(1) Executive Summary (2) Agreement

BOARD ACTION:

APPROVED

(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Patricia Ann Snell

Phone: 754-321-4400

Name: Mary C. Coker

Phone: 754-321-0501

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Senior Leader & Title

Maurice L. Woods - Chief Strategy & Operations Officer

Approved In Open
Board Meeting On:

JUN 13 2017

Signature

Maurice Woods

6/5/2017, 2:52:39 PM

By:

Abby M. Freedman

School Board Chair

Electronic Signature

Form #4189 Revised 07/16

RWR/ MLW/MCC/PAS:lp

AGREEMENT

THIS AGREEMENT is made and entered into as of this 13 day of June, 2017, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

AMERIGAS PROPANE, LIMITED PARTNERSHIP

(hereinafter referred to as "VENDOR"),
whose principal place of business is
460 North Gulf Road
King of Prussia, PA 19406

WHEREAS, SBBC is currently using a mobile fueling contract to fuel the buses; and

WHEREAS, SBBC issued a Request for Proposal (herein after referred to as "RFP"), identified as RFP 17-146R for LPG/Propane Supply and Fueling Dispensers and Services, as a Turn-Key project. RFP was released on December 20, 2016, for the purpose of receiving proposals for LPG / Propane Supply and Fueling Dispensers Services; and

WHEREAS, VENDOR submitted a proposal for RFP 17-146R, and

WHEREAS, the SBBC is in need of supply LPG/Propane gas for the school bus fleet and the construction of 3 Fueling Dispensers and has selected the VENDOR to provide such products and services; and

WHEREAS, VENDOR shall provide Propane, equipment and construction for 3 SBBC Transportation facilities, and

WHEREAS, the SBBC and VENDOR desire to memorialize the terms and conditions of their Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 – RECITALS

1.0 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.0 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.06 of this Agreement, the term of this Agreement shall commence on approval by SBBC and conclude on **May 30, 2022**, and by mutual Agreement between VENDOR and SBBC be renewable for two (2) additional one (1) year periods. SBBC, through the Procurement and Warehousing Services Department, will, if considering renewing, request a letter of intent to renew from VENDOR prior to the end of the current contract period. If needed, the contract will be extended 90 days beyond the contract expiration date and VENDOR will be notified when the Board has acted upon the recommendation.

2.01 Description of Goods or Services Provided.

(a) VENDOR is the largest retail propane distributor in the United States. VENDOR's local servicing district for the three (3) SBBC refueling stations is Fort Lauderdale, FL., which is located less than ten (10) miles away.

(b) VENDOR shall be utilizing a Sub-contractor to build the three (3) refueling stations. Sub-contractor selected by VENDOR is Pre-qualified by SBBC.

(c) Equipment provided by the VENDOR must be installed and maintained at no cost to SBBC. VENDOR shall retain ownership of the equipment and shall be responsible for the electrical cost and crash Protection and concrete pads for these installations.

(d) VENDOR shall maintain all propane tanks and dispensing equipment required to provide propane service to all Transportation Facilities' locations.

(e) VENDOR shall provide training to SBBC employees on all aspects of the onsite fueling system, to include, but not be limited to:

- a. Auto gas station operator & maintenance training.
- b. Propane properties & characteristics, safe handling.
- c. Station operation and maintenance & fueling vehicle propane tanks propane fueling system function including fuel management system.

(f) VENDOR shall provide the services described in **Attachment A, Scope of Services**.

(g) Firm's Response Time: VENDOR is committed to being responsive for emergencies, shall respond within 24 hours of notification and shall provide 24/7, 365 days authorized maintenance services.

(h) VENDOR shall provide emergency refueling in the event of a break down or loss of power for an extended period at the on-site refueling location.

2.02 **Priority Documents:** In the event of a conflict between documents, the following priority of documents shall govern.

- First: This Agreement, then;
- Second: RFP 17-146R – LPG/Propane Supply and Fueling Dispensers and Services, then

Third: Proposal submitted in response to the RFP by the VENDOR

2.03 **Cost of Services:** SBBC shall pay VENDOR for satisfactory services rendered as needed under this Agreement in accordance with prices included on **Attachment B, Cost of Services**, with payment term of net 30 days from the date that the VENDOR submits its invoice to SBBC. Equipment must be installed and maintained at no cost to SBBC. These services shall include, but not be limited to, line tightness testing, overfill protection device inspection, leak detection systems repair and spill containment equipment repairs. There are not any additional expenditures by SBBC for permits, engineering services and construction to house LPG equipment.

2.04 **Payment:** SBBC's preferred method of payment is via ACH electronic payments. An electronic payment can reduce processing time and administrative overhead costs for both parties, resulting in expedited payment upon invoice approval, and reduces exposure to check fraud. SBBC will not pay convenience fees, surcharges, or any additional costs for payments made by electronic payment. VENDOR shall submit ACH form to SBBC upon signing this Agreement.

2.05 **Payment & Performance Bond:** VENDOR shall furnish a surety bond as security for faithful performance of the order(s) performed as a result of this contract, and for the payment of all persons performing labor, and on their furnishing materials in connection therewith. The Attorney-In-fact who signs the bond must file with the bond a certificate and effective dated copy of power of attorney. Bonding company must appear on U.S. Treasury list. The contract shall become effective and in full force upon the execution of this Agreement, concurrently with the delivery of a bond issued by an acceptable Surety Company.

2.06 **Permits and Licenses:** VENDOR shall be responsible for obtaining necessary permits and licenses and shall comply with laws, rules, and regulations whether state or federal and with all local and SBBC codes and ordinances without additional cost to SBBC.

2.07 **Inspection of VENDOR Records by SBBC:** VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by VENDOR or any of VENDOR'S payees pursuant to this Agreement. VENDOR Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. VENDOR Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **VENDOR Records Defined.** For the purposes of this Agreement, the term "VENDOR Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering

negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to *VENDOR* Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to *VENDOR* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *VENDOR* reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to the *VENDOR'S* facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by *VENDOR* to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any *VENDOR* claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by *VENDOR* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by the *VENDOR*. If the audit discloses billings or charges to which the *VENDOR* is not contractually entitled, the *VENDOR* shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. *VENDOR* shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by *VENDOR* to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to *VENDOR* pursuant to this Agreement and such excluded costs shall become the liability of the *VENDOR*.

(h) Inspector General Audits. *VENDOR* shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 **Notice:** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director
Procurement and Warehousing Services Department
7720 West Oakland Park Blvd. Suite 323
Sunrise, FL 33351

With a Copy to: Director
Transportation and Fleet Services
3895 NW 10 Avenue
Oakland Park, FL 33309

To VENDOR: AmeriGas Propane, Limited Partnership
460 North Gulf Road
King of Prussia, PA 19406

2.09 **BACKGROUND SCREENING.**

(a) VENDOR agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.10 **Insurance Requirements.**

The VENDOR shall comply with the following insurance requirements throughout the term of this Agreement.

(a) General Liability. Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Worker's Compensation. Florida Statutory limits in accordance with Chapter 440, Florida Statute; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease- each employee/disease-policy limit). Workers' Compensation Affidavit shall be required if less than four (4) employees and submit with this Agreement.

(c) Professional Liability/Technical Errors & Omissions. Limits not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(d) Pollution Liability: Third-party liability with a minimum limit of \$1,000,000 per occurrence including completed operations.

(e) Auto Liability. Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit. If VENDOR does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 will be accepted. In addition, an affidavit signed by VENDOR must be furnished to SBBC indicating the following: VENDOR does not own any vehicles. In the event insured acquires any vehicles throughout the term of this Agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

(f) Acceptability of Insurance Carriers. The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(g) Verification of Coverage. Proof of the required insurance must be furnished by a Vendor to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of this Agreement. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Vendor time to remedy any deficiencies. **FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424.**

(h) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance: The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida. (Certificate Holder: The School Board of Broward County, Florida, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301).

(i) Cancellation of Insurance. VENDORS are prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

(j) The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this Agreement.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28,

Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **M/WBE Commitment.** Throughout the term of the Agreement, VENDOR shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified M/WBE VENDORS who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, M/WBE VENDORS to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. VENDOR agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting the SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE VENDORS for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for M/WBE VENDOR participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.07 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy 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 future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.08 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.09 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.10 **Public Records:** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfer all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, Insert Name shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN

3.11 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.12 **Compliance with Laws.** Each party shall comply with all applicable federal state and local laws, SBBC policies codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.13 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.14 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.15 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, Agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements, whether oral or written.

3.16 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.17 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.18 **Incorporation by Reference.** Attachments A and B, attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.19 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.20 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.21 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.22 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.23 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.24 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.25 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.26 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.27 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by VENDOR, its agents, servants or employees; the equipment of VENDOR, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VENDOR or the negligence of VENDOR'S agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by VENDOR, SBBC or otherwise.

3.28 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

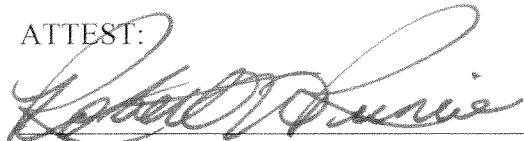
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:


Robert W. Runcie, Superintendent of Schools

By 
Abby M. Freedman, Chair

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams, Esq. -
kathelyn.jacques-adams@gbrowardschools.com
Reason: Amerigas Propane, Limited Partnership
Date: 2017.05.26 08:41:42 -04'00'

Office of the General Counsel

FOR VENDOR

(Corporate Seal)

ATTEST:

AmeriGas Propane, Limited Partnership

By Warren Patterson
Warren Patterson, Vice President

_____, Secretary

-or-
Mary P. Phillips Barks
Witness

Sharon McHenry
Witness

The Following Notarization is Required for Every Agreement Without Regard to
Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Pennsylvania

COUNTY OF Montgomery

The foregoing instrument was acknowledged before me this 5th day of
June, 2017 by Warren Patterson of
_____, Name of Person
Amerigas Propane L.P., on behalf of the corporation/agency.
_____, Name of Corporation or Agency

He / She is personally known to me or produced _____ as
identification and did/did not first take an oath. _____
Type of Identification

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Steven Ughy, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires April 11, 2018
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

(SEAL)

Steven Ughy
Signature – Notary Public

Steven Ughy
Printed Name of Notary

118 7683
Notary's Commission No.

ATTACHMENT A

SCOPE OF SERVICES

Phase 1: Evaluation -Site Compatibility

Prior to beginning construction, VENDOR shall submit details of the work plan specific to this scope of services to SBBC, including but not limited to:

1. Site Drawing
To identify grading, landscaping, and details of construction site.
2. Zoning
Gain approval from authorities for appropriate tank placement/sizing.
3. Survey
A surveyor shall set property corners and produce a detailed plan.
4. Easements
Identify if any right of way is necessary.
5. Set backs
Establish appropriate distances from buildings and structures.
6. Utilities
Find existing or future services, for proper tank placement.
7. Approval by SBBC.

Phase 2: Licensing and Permitting

Prior to mobilization, VENDOR shall submit a project schedule to SBBC for prior approval. Additionally, VENDOR shall obtain any and all necessary permits which include by is not limited to:

1. Building Permit
Obtain permit for the new construction on SBBC property.
2. Local Permits
VENDOR/Subcontractor shall meet the requirements for local permits and code compliance.
3. Electrical
The issuance of an electrical permit by a licensed electrician.
4. Approved Site Plan
Shall indicate approval for above ground tank and dispenser installation.

General Contractor and Subcontractor shall provide general contractors license.

All Fire & Safety equipment/installation shall meet all NFPA standards.

Phase 3: Project Commencement

VENDOR shall employ a licensed and SBBC prequalified contractor for construction and installation to act as its agent on this project.

1. Site Layout

Contractor shall provide as part of their mobilization activity before work begins.

2. Excavate/Trench

If necessary, trenching shall be used to install underground utilities.

3. Underground Lines

All wiring underground shall be conducted by licensed and prequalified by SBBC electrician.

4. Slab Work

If required, all tanks shall be level and meet NFPA 58 standards.

5. Set Tank

All tanks shall be set in accordance to NFPA 58 guidelines.

6. Set Bollards

Vehicle barrier protection shall be placed by the NFPA 58 requirements.

7. Connect Dispensers

All connections shall be performed by a license/certified and prequalified by SBBC electrical contractor.

Phase 4: System Test and Final Sign Off

VENDOR shall conclude the following System Test:

1. Electrical

All electric shall meet the NFPA 70 Electrical Code and approved by State Fire Marshall.

2. Site

Installation of equipment shall meet all NFPA 58 standards and will be approved.

3. Fire Marshall

Shall approve final permits and code compliance per planning to propane installation.

4. Equipment

All equipment shall be tested and approved by VENDOR/subcontractor and training shall be provided on accurate use of equipment.

SBBC shall approve all services performed by VENDOR/subcontractor to verify all have been successfully completed.

ATTACHMENT B

COST OF SERVICES

- a) Propane fuel is to be priced per gallon on a strictly pass-through basis, using the average price of propane for all companies at Enterprise Alma as reported by the Butane-Propane News (BPN) Weekly Newsletter, Propane Prices Update column, most recent edition plus a fixed mark-up per gallon. Negotiated mark-up is \$0.420. Based on the volume of gallons there is a mark-up reduction program. Table below shows this Reduction Program. No additional fees shall be paid by SBBC to VENDOR or VENDOR's sub-contractors.

SBBC Volume based mark-up reduction program. Once SBBC reaches annual volume mark-ups are adjusted down:

- a. 1,250,000 annual gallons - \$.010 mark-up reduction
 - b. 1,500,000 annual gallons - \$.0075 additional mark-up reduction
 - c. 1,750,000 annual gallons - \$.0075 additional mark-up reduction
 - d. 2,000,000 annual gallons - \$.0075 additional mark-up reduction
- b) The Alma GA average published price shall be the uniform standard basis for prices under this Agreement regardless of where the propane is obtained by the VENDOR.
- c) The unit price per gallon mark-up above the BPN pass-through published price of propane remains fixed through the term of the contract, including any potential renewals, extension periods or for bulk, prearranged or fixed quantities. The mark-up shall be a uniform price per gallon regardless of delivery location. The mark-up price shall include any and all labor, material, equipment, insurance and maintenance of the same throughout the term of the contract. Any unit price adjustment invoiced without written approval from SBBC shall not be paid and the invoice returned to the VENDOR for correction.
- d) SBBC reserves the right, based upon mutual Agreement with the Vendor, to substitute an alternate method for price adjustment for a specified negotiated period of time if:
1. An interruption is the BPN Weekly Newsletter beyond existing holidays (Independence Day, Christmas and the like).
 2. The listing of prices for the BPN Propane Prices Column are interrupted or modified to a degree which would require alteration of the computation formula to determine a fair price.
 3. The use of the BPN Propane Prices Column computation becomes non-representative of the market.
 4. VENDOR provides clear proof that market conditions unrelated to the BPN Propane Prices Column have materially altered from those that existed at the time of award or the renewal of the contract. Such proof may consist of contracts with suppliers, invoices, published pricing, etc.
- e) VENDOR shall provide SBBC with an estimated cost per gallon of pumped propane (tax exempt status considered) and a list of any and all fees or cost incurred from the use of

pumping equipment, delivery, etc. SBBC understands that a competitive cost per gallon fluctuates daily.

- f) VENDOR shall provide all needed or required reports when filing for the districts federal excise tax annual refund.