

AGREEMENT
FOR
CUSTODIAL/MAINTENANCE/GROUNDS AND
MANAGEMENT SERVICES
BETWEEN
FRANKLIN LAKES BOARD OF EDUCATION
AND
ABM INDUSTRY GROUPS, LLC

THIS AGREEMENT made this ___ day of _____, 2022 between the Franklin Lakes Board of Education, with offices located 490 Pulis Avenue, Franklin Lakes, New Jersey 07417 (hereinafter referred to as the “Board”), and ABM Industry Groups, LLC, with offices located at 242 Old New Brunswick Road, Suite 430 Piscataway, New Jersey 08854 (hereinafter referred to as “ABM”).

WITNESSETH:

WHEREAS, the Board and ABM were parties to an Agreement for Custodial, Maintenance, Grounds, and Management Services (hereinafter referred to as “custodial services”) within the Franklin Lakes School District (hereinafter referred to as the “District”) for the period from July 1, 2017 through June 30, 2021; and

WHEREAS, on or about November 1, 2021, the Board applied to the Division of Local Government Services Department of Community Affairs, for the use of competitive contracting to secure proposal for Janitorial Maintenance and Management Services; and

WHEREAS, on or about November 10, 2021, the Division of Local Government Services approved the Board’s request to use competitive contracting to procure Janitorial Maintenance and Management Services; and

WHEREAS, the Board advertised for competitive contracting for Janitorial Maintenance and Management Services; and

WHEREAS, on or about April 1, 2022, the Board received proposals for Janitorial Maintenance and Management Services; and

WHEREAS, on or about April 19, 2022, the Board determined that the specifications required substantial revisions and rejected the proposals; and

WHEREAS, the Board wishes to memorialize the terms of their continued Agreement with ABM for the period from July 1, 2021 through June 30, 2022.

NOW, WHEREFORE, based on the foregoing premises and mutual promises and covenants contained herein, the parties agree as follows:

1. *Services and Payment.* For the period beginning July 1, 2021 and ending June 30, 2022, ABM agrees to provide custodial services in the District consistent with the level, quality and frequency of services that have been provided to the District since July 1, 2022. The Board has paid ABM the monthly amount of \$102,112.32, through March 30, 2022 and shall make monthly payment in the amount of \$105,175.69 for the duration of this Agreement.
4. *Payment of Invoices.* The contract amount shall be paid by the Board in equal monthly installments in accordance with the terms and conditions of this Agreement. The Board will pay all invoices from ABM by the first day of the following month to which each such monthly payment applies. ABM shall provide to the Board a duly executed voucher received no later than the twenty-fifth (25th) day of the month for which services were rendered during the period beginning on the first (1st) day of the previous month and ending the last day of the previous month. All records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the Board for a period of six (6) years after final payment: copies will be made available to the Board upon request. In no event shall ABM be entitled to interest on any overdue payment unless specifically required pursuant to N.J.S.A. 18A:19-12. Failure to clean the entire assigned area, determined by a review of the daily report submitted by ABM, will result in a charge back to ABM for the costs incurred by the Board. Aforesaid amount shall be deducted from the monthly payment to ABM.
5. *Assignment.* The rights of the Board or ABM under the Agreement are personal to each party, and neither party shall assign, transfer, hypothecate or otherwise assign its rights or delegate its duties under the Agreement, whether voluntarily, involuntarily or by operation of law, without the prior written consent of the other party to the Agreement.
6. *Independent Contractor.* ABM is and shall perform its services under the Agreement as an independent contractor and not as the Board's agent, partner or joint venture.

ABM is engaged to render the services only, as specified in the Agreement, and any payments made by the Board are compensation solely for such services rendered.

7. *Poor Performance Deduction.* Deduction amounts of up to two percent (2%) of monthly fee will be deducted for ABM's poor performance (i.e. not completing work, poor quality or otherwise unacceptable or unsatisfactory work). Monthly inspections of the Contract Cleaning/Custodial Services may be conducted by the Business Administrator/Board Secretary, or his designee, by the seventh (7th) of each month. If any deficiencies found during inspections are not corrected within seven (7) business days, ABM will then be subject to up to a two percent (2%) deduction from that month's fee. Nothing contained herein shall be construed so as to prevent the Board from resorting to its contractual remedies, including, but not limited to, termination of the agreement.
8. *Termination.* The Agreement may be terminated as follows:
 - a) *Termination for Cause:* If ABM fails to comply with any of the obligations required of it by the terms and provisions of the Agreement and, following receipt of written notice specifying the failure(s) fails to remedy and cure such failure(s) within ten (10) days, then the Board shall have the right to terminate the contract and declare ABM in default and liable for any and all damages incurred by the School District. The Board may, at its option, require ABM's surety to complete the project in accordance with the terms of the Performance Bond, in addition to any other legal remedies that the Board may have.
 - b) *Termination for Convenience:* The Board may terminate this Agreement without cause upon thirty (30) calendar days' written notice to ABM. In the event the Board terminates the agreement without cause, ABM shall be entitled to payment prorated to the date of termination. Notwithstanding the above, the successful ABM will not be relieved of liability to the Board for damages sustained by the Board by virtue of any breach of the Agreement by ABM and the Board may withhold any payments to the ABM for the purpose of compensation until such time as the exact amount of the damages due to the Board from ABM is determined.
9. *Insurance.* ABM shall furnish certificates of insurance from an insurance company licensed to do business in the State of New Jersey to the Board establishing that it has insurance coverage for all of the services specified in this Agreement and in amounts set forth in the Specifications. Full coverage must be provided for the Board and its officers, agents and employees, ABM's officers, agents and employees,

any sub-consultants and any member of the public who may be injured or suffer damage from any act or omission of ABM, its officers, agents or servants. The Board shall be named as an additional named insured on all insurance policies. The required insurance coverage must be in effect at all times during the term of this Agreement. Each policy shall contain a provision that the policy cannot be cancelled or allowed to expire and the limits will not be reduced until at least thirty (30) days' notice is given to ABM and the Board by certified mail, return receipt requested. In the event of cancellation or modification, ABM shall obtain insurance in the same amount and for the same coverage from another carrier prior to the date of cancellation or modification. Evidence of the insurance coverage required by this Agreement shall be furnished to the Board prior to commencement of services required by this Agreement.

10. *Indemnification.* ABM shall indemnify and hold the Board, its members, officials, and all of their agents and employees harmless from and against any and all claims, damages, losses and expenses, including attorneys' fees and costs of litigation, arising out of, resulting from or in connection with the custodial services, which are caused, in whole or in part, by any error, omission, negligent or willful act of the ABM, its agents and employees. The Board may defend itself, at ABM's expense, from any claim or lawsuit which may arise out of the ABM's performance or lack of performance under the terms of this Agreement or the Board may elect to have ABM provide the Board with legal representation at ABM's own expense. This provision shall survive the termination of this Agreement. Further, ABM shall be solely responsible for, and shall reimburse, indemnify, and hold harmless the Board for any taxes, penalties, or other liabilities assessed against ABM or the Board due to ABM's failure to comply with federal, State and/or local labor and employment laws applicable to ABM's employees, including, but not limited to, the Patient Protection and Affordable Care Act ("ACA"); Internal Revenue Code; the Employee Retirement Income Security Act ("ERISA"); the Health Insurance Portability and Accountability Act ("HIPAA"); the Family Medical Leave Act ("FMLA"); Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act ("ADA"); the Fair Labor Standards Act ("FLSA"); the Consolidated Omnibus Budget Reconciliation Act ("COBRA"); the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"); and/or the Immigration Reform and Control Act of 1986 ("IRCA").
11. *Laws Against Discrimination.* During the performance of this contract, ABM agrees as follows:
 - a) ABM will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry,

marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression. ABM will ensure that equal employment opportunity is afforded to such applicants in employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal opportunity employment shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ABM agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

- b) ABM will in all solicitations or advertisements for employees placed by or on behalf of ABM, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- c) ABM will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of ABM's commitments under the Law Against Discrimination, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d) ABM agrees to comply with the regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31, *et seq.*, as amended and supplemented from time to time and the Americans with Disabilities Act.
- e) ABM agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2 or good faith efforts to meet targeted employment goals determined by the Division pursuant to N.J.A.C. 17:27-5.2.
- f) ABM agrees to inform in writing appropriate recruitment agencies, including, but not limited to, employment agencies, placement bureaus, colleges,

universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

- g) ABM agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
 - h) In conforming with the targeted employment goals, ABM agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
 - i) ABM shall furnish such reports or other documents to the Division of Public Contracts and Equal Employment Opportunity Compliance Office as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts and Equal Employment Opportunity Compliance Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).
 - j) ABM shall comply with the requirements of “Exhibit A, Mandatory Affirmative Action Language - Goods, Services and Professional Services Contracts” which is attached hereto and incorporated by reference as if set forth herein at length.
12. *Laws.* ABM shall comply with all applicable laws, statutes, regulations and ordinances and any other rule issued by any governmental entity. This Agreement shall be governed by the laws of the State of New Jersey. Any and all claims, disputes or other matters in question between the Board and ABM arising out of or relating to this Agreement or alleged breach thereof, shall be subject to and determined by a court of competent jurisdiction venued in Bergen County, New Jersey.

13. *Waiver of Jury Trial.* ABM and the Board hereby knowingly irrevocably waive the right to trial by jury in any action arising out of or relating to this Agreement. This waiver does not apply to personal injury actions or to any action in which another party, not bound by such a waiver, demands trial by jury. This waiver is knowingly, intentionally, and voluntarily made by ABM.
14. *Anti-bullying Policy.* ABM shall comply with all applicable provisions of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13.1 *et seq.*, and the anti-bullying policy of the Board. ABM and its employees shall verbally report any act of harassment, intimidation or bullying of a student of the District on the same day on which the act was witnessed, or on the same day on which reliable information that a student has been subject to harassment, intimidation or bullying was received, and shall report the same in writing, within two (2) school days. All verbal and written reports of harassment, intimidation or bullying of a student shall be made to the school principal or to any school administrator or safe schools resource officer. Reports may be made anonymously in accordance with the reporting procedure as set forth in the anti-bullying policy. The District shall provide to all contracted service providers and their employees a copy of the anti-bullying policy and information regarding the policy.
15. *Political Contribution Disclosure.* ABM is advised of the responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, s.3) if ABM receives contracts in excess of \$50,000 from public entities in a calendar year. It is ABM's responsibility to determine if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.
16. *Counterparts.* This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.
17. *Construction and Effect.* A waiver of any failure to perform under this Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. This Agreement may be executed in several counterparts, each of which shall be deemed an original.
18. *Severability.* If any term or provision of this Agreement or the application hereof to any person or circumstance shall, to any extent or for any reason be invalid or unenforceable, the remainder of this Agreement and the application of such term or

provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. *Amendments to Agreement.* All provisions of this Agreement shall remain in effect throughout the term hereof unless the parties agree, in a written document signed by both parties, to amend, add, or delete any provision. This Agreement contains all agreements of the parties with respect to matters covered herein, superseding any prior agreements and may not be changed other than by an agreement in writing signed by the parties hereto.
20. *Entire Agreement.* This Agreement and the Specifications, Addenda thereto and ABM's proposal and other documents specifically incorporated by reference herein contains the entire understanding and agreement of the parties concerning the matters contained herein, and supersedes and replaces any prior or contemporaneous oral or written contracts or communications concerning the matters contained herein. In the event of a conflict between the Specifications, this Agreement, or ABM's proposal, the provisions that are most advantageous to the Board shall control.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the date and year aforementioned.

Witness:

FRANKLIN LAKES BOARD OF EDUCATION

Trenae Lambkin
Business Administrator/
Board Secretary

By:_____
Elisa Billis
Board President

Dated: _____

Witness:

ABM INDUSTRY GROUPS, LLC

By:_____
President

Dated: _____