

CONSTRUCTION SERVICES AGREEMENT

BETWEEN

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

AND

CONSTRUCTION MANAGER

FOR

CONSTRUCTION MANAGEMENT AT RISK SERVICES

PROJECT NO: (Project Number)

PROJECT NAME AND LOCATION: (Name)
(Location)
(Location No.)
(City/State/Zip)

CONSTRUCTION MANAGER: (Name)
(State/Corp)
(Street)
(City/State/Zip)
(Phone)(Fax)

PROJECT CONSULTANT: (Name)
(Street)
(City/State/Zip)
(Phone)(Fax)

FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made and entered into this (Day) day of (Month) in the year (Year) by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as **Owner**) and

(Contractor's Name),
(Contractor's Street Address)
(City, State, Zip)
(Contractor's Phone)
(Contractor's FAX)
(Federal Employer Identification Number (FEIN))
(State of Incorporation)

(hereinafter referred to as "**Construction Manager**")

WHEREAS, Owner is the owner of certain real property located in Broward County and Owner desires to have:

(Project Title)
(Project Number)
at
(Facility Name)

constructed pursuant to drawings, specifications and other contract documents prepared by or to be prepared by,

(Project Consultant)

(hereinafter referred to as Project Consultant).

WHEREAS, the Construction Manager is desirous of performing the Work in accordance with the Contract Documents and all applicable laws, codes and ordinances.

NOW THEREFORE, in exchange for the mutual covenants and promises set forth herein and the sums of money agreed to be paid by the Owner to Construction Manager, the parties agree as follows:

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ARTICLE 1
THE PROJECT CONSTRUCTION TEAM AND ENTIRE AGREEMENT

- 1.1 The Construction Manager (CM) accepts the relationship of trust and confidence established between it and the Owner by this Agreement. It covenants with the Owner to furnish its best skill and judgment and to cooperate with the Project Consultant in furthering the interests of the Owner. It agrees to furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.
- 1.2 The Project Construction Team - The Construction Manager, the Owner, Owner's Representative and the Project Consultant, called the Project Construction Team, shall work jointly during design and through the completion of the warranty phase and shall be available thereafter should additional services be required. The specific representatives of the Construction Team are shown in Exhibit A attached to the General Conditions.
- 1.3 Entire Agreement - This Agreement between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements with respect to the project. When drawings, specifications and other descriptive documents defining the Work to be included in the Guaranteed Maximum Price (GMP) is completed pursuant to Article 6, an Addendum to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. When drawings, specifications and other descriptive documents defining the Work to be included under a Notice to Proceed are completed pursuant to Article 6, they shall be identified in the Notice to Proceed issued by the Project Manager. To expedite the preparation of this GMP Addendum by the Owner, the Construction Manager shall obtain three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based from the Project Consultant. The Construction Manager shall acknowledge, by signature, on the face of each document of each set that it is the set upon which the Construction Manager based the GMP and shall send one set of the documents to the Owner's Project Manager along with his GMP proposal, while keeping one set for himself and returning one set to the Project Consultant.
- 1.4 Contract Documents - The Contract Documents, which constitute the entire agreement between Owner and Construction Manager, consist of the CMAR Agreement Form and all exhibits thereto, the Proposal and all attachments and supporting documentation submitted by the Construction Manager in response to the Request for Qualifications/Proposals, requirements pursuant to Chapter 287, Florida Statutes on Public Entity Crimes, these General Conditions, all Addenda, and the Project Consultant's Agreement with the SBBC. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those listed above, those identified by the GMP Amendment and the Design Documents attached thereto, including but not limited to the Project Manual, Drawings, Specifications, any other General and Supplementary Conditions (Divisions 0 and 1), and all modifications issued after execution of the Contract. These documents embody the entire agreement between Owner and Construction Manager and supersede all other writings, oral agreements, or representations.

The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.

No changes, amendments or modifications of any of the terms or conditions of the Agreement shall

be valid unless reduced to a written instrument and signed by both parties.

ARTICLE 2 THE WORK

- 2.1 The Construction Manager shall perform all of the Work required by this Agreement and the Contract Documents specified in the General Conditions and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work. The CM shall perform the Work in a good and workmanlike manner with sufficient manpower to meet the time and quality requirements set forth in the Contract Documents, and shall provide and perform all other work and services necessary to complete the Work in strict accordance with the Contract Documents.
- 2.2 When completed, the Work shall conform to the requirements of the Contract Documents and be ready for Substantial Completion and Final Completion.
- 2.3 The Construction Manager represents and warrants to the Owner that:
- .1 It is financially solvent and has sufficient working capital to perform its obligations under this Construction Contract;
 - .2 It is experienced and skilled in the construction of the type of project described in the Contract Documents;
 - .3 It is able to provide the labor, materials, services, equipment and machinery necessary to complete the Work for the agreed upon price;
 - .4 It is fully licensed under all applicable laws and authorized to do business as a General Contractor in the State of Florida in the name of the entity identified as the "Construction Manager" in the Construction Contract;
 - .5 It has visited the jobsite and examined its nature and location, prior to submission of the GMP, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings as provided by the Owner and the location of electric and utility lines and water, sanitary, sewer and storm drain lines as provided by the Owner. The Construction Manager acknowledges receipt and has reviewed the site geotechnical report provided by the Owner.
 - .6 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents; where a conflict exists between any laws and/or regulation, the most stringent shall apply.
 - .7 It will comply with the Workforce Composition requirements, M/WBE program goals, and submit and comply with the Certificate of Intent requirements.
 - .8 It will review the Consultant's Design and Construction documents and provide comments in accordance with contract requirements.

ARTICLE 3
CONSTRUCTION MANAGER'S SERVICES

3.1 The services of the Construction Manager shall include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The Construction Manager shall also comply with all requirements of the Florida Building Code (FBC), Florida Fire Prevention Code (FFPC), State Requirements for Educational Facilities (SREF), the Florida K-20 School Code, and any other applicable codes, regulations and procedures that are in effect as of the date the building permit(s) is issued.

.1 Notwithstanding any other provisions of this Agreement to the contrary, any substantially affected person may appeal any building code dispute or interpretation of the Chief Building Official of the School Board of Broward County, Florida to the Florida Building Commission as set forth in Florida Statute 1013.37(2005) and the Florida Building Code, as amended.

3.2 **GENERAL (Part of Preconstruction Phase)**

.1 The Construction Manager shall review project requirements, educational specifications, on and off-site development, survey requirements, preliminary budget, and make value engineering and constructability recommendations for revisions to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.

.2 The Construction Manager shall, subject to Owner's approval and compliance with existing Owner completion schedule, establish a preliminary master project schedule identifying all phases, Critical Path elements, responsibilities of the Owner, Project Consultant, outside agencies, third parties and any other impacts which would affect project schedule and progress and update them monthly throughout the duration of the contract.

.3 Where the project includes renovation or expansion of an existing Facility, the Construction Manager will assist the Construction Team in preparing an analysis package outlining the condition of the existing Facility, existing structure, existing finishes, and existing equipment, code deficiencies, energy use, and life expectancy of other building systems by providing constructability, value engineering and cost estimates recommendations. The package should contain the Construction Managers recommendations, cost estimates and preliminary schedules. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.

.4 Not Used

.5 The Construction Manager shall provide project delivery options for the design, bid, and bid packaging of the project for efficient scheduling, cost control and financial resource management. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.

.6 The Construction Manager shall utilize information and reporting systems to provide the Owner with monthly reports containing accurate and current cost controls, work status, including but not limited to Work narrative, Work completed/anticipated, short term and long term schedules estimated expenditures, and project accounting systems of the project at all times. Such information shall be provided to the Owner and Project Consultant in the form of

a written report, prior to final payment for this phase.

- .7 The Construction Manager shall prepare a report with the Project Team's participation which shall describe, as a minimum, the Work plan, job responsibilities, and written procedures for reports, meetings, inspections, changes to the project, building systems and delivery analysis and other relevant matters. Such information shall be provided to the Owner and Project Consultant prior to final payment for this phase.
- .8 The Construction Manager shall provide market analysis and motivation for subcontractor interest and recommendations for minority business participation. This shall include analysis of the Construction Manager's historical data for subcontracting, communication with contractor and trade organizations requesting participation, review of the Owner's M/WBE data, advertising, outreach programs, mailings to all prospective bidders identified by these actions, and reporting of all of the foregoing to the Owner. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .9 The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit B of the General Conditions. All required reports and documentation shall be submitted and approved by the Owner as pre-requisite to progress payments to the Construction Manager by the Owner during this phase.

3.3 **DESIGN PHASE (Part of Preconstruction Phase)**

- .1 The Construction Manager will be required to attend all project related meetings and include a summary of the meeting in its monthly report to the Owner as specified in Specification 01310.
- .2 The Construction Manager will periodically review all Contract Documents for constructability and to help ensure compliance with all applicable laws, rules, codes, design standards, and ordinances. Construction Manager shall immediately notify Owner of any non-compliant Contract Document. Such information shall be provided to the Owner and Project Consultant in the form of a written report in format as noted herein prior to final payment for this phase.
- .3 The Construction Manager's services shall be rendered compatibly and in cooperation with the Project Consultant's services under the Owner's Agreement with the Project Consultant. The Construction Manager will be required to maintain a working relationship with and coordinate their activities with the Project Consultant and any additional consultants, testing labs and others that Owner designates for the project and report all findings as specified in Specification 01310.
- .4 The Construction Manager shall prepare detailed cost estimates and recommendations to Owner and Project Consultant at S.D., (Schematic Design), D.D (Design Development) C.D. (50% and 100% Construction Documents) phases of the project. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for each phase.
- .5 The Construction Manager shall review all Contract Documents for the new and existing

buildings and/or building sites and provide value engineering recommendations to minimize the Owner's capital outlay and maximize the Owner's operational resources. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase. All such recommendations shall be acknowledged and reviewed for incorporation into the construction documents by the Project Consultant once authorized by the Owner in writing.

- .6 The Construction Manager will review all Contract Documents, all new and existing buildings' conditions and the building site to ensure proper coordination, constructability, clarity and completeness, and to minimize conflict, errors, omissions and unforeseen conditions. The Construction Manager shall coordinate with the Project Consultant to eliminate change orders due to errors, omissions and unforeseen conditions. The Construction Manager agrees specifically that no Change Orders shall be requested by the Construction Manager or considered by the Owner for reasons that were or should have reasonably been known by the Construction Manager involving unforeseen conditions, conflicts or questions of clarity in the Contract Documents, or between the Contract Documents and the existing conditions, utilities, and unforeseen underground conditions.
- .7 The Construction Manager shall periodically update the master project schedule and make recommendations for recovery of lost time. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .8 The Construction Manager will coordinate with the Project Consultant and provide to the Project Construction Team permitting applications and requirements for the projects. The Construction Manager will periodically update cost estimates and make recommendations to keep the project within the target budget.
- .9 At completion of the Construction Manager's review of the plans and specifications, except only as to specific matters as may be identified by appropriate written comments pursuant to this section, the Construction Manager, without assuming the project consultant's responsibilities, shall notify owner in writing that the plans and specifications are consistent, practical, feasible and constructible and that the work described in the plans and specifications for the various bidding packages is constructible within the scheduled construction time.
- .10 **DISCLAIMER OF WARRANTY: THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT, CONSTRUCTIBLE OR WITHOUT DEFECT.**
- .11 The Owner may select certain projects for expediting using fast-track construction. When this option is exercised, in writing, by SBBC, it shall be implemented in accordance with the following:
 - A. Design/Construction documents as noted herein shall be submitted by the Consultant for review and approval by SBBC (including Building Code review and Building permit issuance for 100% completion documents) the Construction Manager and others, as applicable, having jurisdiction;
 1. Foundation / Structural / LCCA / Site and Off-Site Package – 100% Documents
 - (a) A separate 50% completion progress set (for information only) of Building Finish Package drawings shall also be submitted which shall show all of the major characteristics of the project utilities and service, detailed site and floor

- plans, elevations, sections, schedules, etc.
- (b) Construction may begin after approvals and building permit is obtained for above package.
2. Building Finish Package – 100% Documents
 3. As mutually agreed by the parties in writing.

3.4 **BIDDING AND AWARD PHASE (Part of Preconstruction Phase)**

- .1 Upon obtaining all necessary approvals of the Construction Documents, including a Building Permit as required by the FBC and Owner approval of the latest Statement of Probable Construction Cost, the Construction Manager shall obtain bids and commence awarding construction contracts. The Owner will have the drawings and specifications printed for bidding purposes, either through its open Agreements with printing firms or as a reimbursable service through the Project Consultant, or as set forth in Article 26.03.07 in the General Conditions.
- .2 The Construction Manager shall review the Owner's records of pre-qualified contractors, including Minority/Women Business Enterprises (M/WBEs), and prepare a list of those recommended for work pursuant to this contract. The Owner reserves the right to reject any or all subcontractors recommended for approval. The Construction Manager shall maintain a list of all potential bidders, including M/WBEs and those who are approved as pre-qualified.
- .3 The Construction Manager shall prepare and issue the bid packages to cover the scope of the Work for this contract.
- .4 The Construction Manager, in coordination with the Owner, shall schedule pre-bid conferences as required and issue a written summary of the conference(s).
- .5 The Construction Manager and Owner shall jointly open, at a mutually agreed SBBC location, and evaluate at least three bids, if possible, for each portion of the Work solicited. The Construction Manager shall also make recommendations to the Owner for award to the lowest, responsive, and responsible bidder. A recommendation for award to other than the lowest bidder shall be justified in writing. Construction Manager will disclose any related party relationship in a bidding subcontractor in writing prior to the award of contracts. For the purposes of this agreement, a related party relationship shall constitute any instance of common ownership, common management, or an ownership stake in the bidding subcontractor. The Construction Manager is required to present the bid tabulation summary and all supporting bid day documentation to the Owner after the bid opening. The referenced documentation as well as the awarding of any subcontracts is subject to the written approval of the Owner. The Construction Manager is not authorized to enter into any subcontract agreements without first obtaining written approval for each subcontractor.
- .7 Guaranteed Maximum Price (GMP): Upon completion of the design phase [construction documents 100% complete] and bidding, the Construction Manager shall present to the Owner the GMP for the Owners review and approval in accordance with Article 6 of this Agreement.
- .8 At the time of the submission of the documents referenced in Article 3.4.5, the Construction Manager is required to submit, in writing, a buyout reconciliation of all subcontracts that have been awarded as a product of the initial bid opening date. The result of this reconciliation is to be presented in association with a modified schedule of values reflecting the net buyout

adjustment in the Owner Savings / Buyout line on the schedule of values. Any un-awarded values remaining in the GMP shall continue to be carried at their estimated amounts until a subcontract is awarded and adjusted in accordance with Article 6.1 of this agreement.

- .9 Should the Construction Manager desire to submit a bid to self-perform any of the portions of the Work, this intention must be clearly conveyed to the Owner prior to the receipt of any other bids for the same scope of work. All bids to be received for this portion of the Work must be submitted directly to the Owner who will then open and evaluate at bid opening. When three (3) or more bids are received for that portion of work, and the Construction Manager's bid is the lowest and approved by the Owner, the Construction Manager's bid shall be incorporated in the GMP as a lump sum. In the event where fewer than three (3) bids are received for that portion of work which the Construction Manager intends to self-perform, the Owner shall reimburse the Construction Manager for the actual cost of work performed, subject to the supporting documentation provisions as outlined in this Agreement.

3.5 **CONSTRUCTION PHASE (Part of Post-GMP Construction Phase)**

- .1 The Construction Manager shall fully comply with the provision of the Owner's Project Manual, including but not limited to Division 0 and 1, and the attached General Conditions. In the event of a conflict between this Agreement and such documents the agreement shall control.
- .2 The Construction Manager shall provide the minimum staffing level as set forth in Exhibit B of the General Conditions for this project:
- .3 The Construction Manager shall maintain and prepare monthly updates for all project schedules, including Critical Path elements, provide written progress reports, describe problems and corrective action plan(s) and conduct briefings as required by the Owner. Such information shall be provided to the Owner and Project Consultant in the form of a written report with progress payments requests.
- .4 Subject to Article 3.4.9, the Construction Manager may self-perform certain construction work when it benefits the Owner, results in cost and time savings, and is pre-approved by the Owner in writing.
- .5 The Construction Manager shall coordinate project close-out, operation, and transition to occupancy.
- .6 The Construction Manager shall coordinate with the Project Consultant to provide complete project records including project manual, and electronic Computer Assisted Drafting (CAD) drawings corrected to show all construction changes, additions, and deletions. (Construction Manager shall note all changes on the as-builts for the Project Consultant to reflect on the drawings and CAD disc.)
- .7 The Construction Manager shall coordinate with the Owner's staff to prepare the Certificate of Final Inspection.
- .8 The Construction Manager shall obtain and review all warranties, operations and maintenance manuals and other such documents, for completeness, have them corrected if necessary and submit them to the Owner.

- 9 The Construction Manager shall complete all punch list items generated by the Building Code Inspector (BCI), the Owner, the Project Consultant and any others having jurisdiction over the project, during its inspections.
- 10 If at any time during the course of the Project, Owner determines that the performance of any Subcontractor, member of the Project Team or other member of Construction Manager's staff working on the Project is unsatisfactory, Owner can require Construction Manager to remove such person or entity from the Project immediately and replace such person or entity. Replacements of members of the Project Team or Construction Manager's staff shall be at no cost or penalty to Owner for delays or inefficiencies the change may cause. Construction Manager shall be entitled to request a Change Order for costs and time associated with the replacement of Subcontractors required by Owner.
- 11 Construction Manager shall exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its Subcontractors on the Project shall work in harmony, and be compatible, with all other labor being used on the Project and representatives of Owner. Construction Manager shall include this provision in all contracts with its Subcontractors, and all Subcontractors shall include such provision in their contracts with sub-subcontractors; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work guaranteed by Article I, Section 6 of the Florida Constitution.
- 12 No Contractual Relationship. Nothing contained in this Agreement shall create a contractual relationship between Owner and any other person or entity other than Construction Manager.
- 13 Good Order. The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other persons carrying out Construction Manager's obligations under the Contract Documents. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 14 Liability. Construction Manager shall be responsible to Owner for acts and omissions of Construction Manager's employees, contractors and their subcontractors, agents and employees, and other persons, including, design professionals, performing any portion of Construction Manager's obligations under the Contract Documents.

3.6 WARRANTY PHASE (Part of Post-GMP Construction Phase)

- 1 The Construction Manager shall provide a minimum one (1) year warranty and shall coordinate and supervise the completion of warranty Work during the warranty period. Construction Manager shall participate with the Owner in conducting of warranty inspections held on the sixth (6th) and eleventh (11th) months after occupancy. Construction Manager shall deliver all as-built drawings, warranties and guaranties to the Owner.
- 2 Where any Work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be free from improper

workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Owner Occupancy of the Project or a designated portion thereof or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications or by Florida Law. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents.

.3 The Construction Manager shall provide a Warranty Summary Report at the end of the 6-month warranty period and 11-month warranty period. This report shall provide at a minimum;

- (1) Description of each warranty item during the period.
- (2) Date item reported to Construction Manager.
- (3) Date item corrected. If more than one trip required, document each.
- (4) Description of action taken to cure warranty item.
- (5) Obtain signature of school principal or designee acknowledging warranty items have been completed.
- (6) Other pertinent information, if applicable.

.4 Refusal of the Construction Manager to provide any work required in the Warranty Phase of the project shall be basis for non-payment of any and all Warranty Phase Fee unpaid at the time of refusal.

ARTICLE 4

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 Prior to commencement of the Construction Phase, the Owner shall issue to the Construction Manager, in writing, a Notice to Proceed (NTP) for the Construction Phase. The NTP shall include a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the master project schedule in accordance with the GMP Addendum. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date and final completion date.

ARTICLE 5

LIQUIDATED DAMAGES

5.1 LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION

.1 The Construction Manager shall pay the Owner the sum of:

_____ dollars \$_____ per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth in the contract documents for Substantial Completion of each phase, if phased, or the project, if not phased.

.2 Owner and Construction Manager acknowledge that any sums due and payable hereunder by

the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner as estimated at the time of executing this Contract. If the Owner reasonably believes in its discretion that Substantial Completion will be delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when in the Owner's discretion the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

- .3 Partial use or occupancy of the Work may not result in the Work being deemed substantially completed, and such partial use or occupancy may not be evidence of Substantial Completion.

Substantial Completion, in the context of this Contract, does not refer to any prior dates wherein the Owner employs other contractors to work on the same site of the Project or Work.

5.2 LIQUIDATED DAMAGES FOR FINAL COMPLETION:

- .1 If the Construction Manager fails to achieve final completion within 60 days of the date of Substantial Completion, the Construction Manager shall pay the Owner the sum of:

_____ dollars \$ _____ per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for final completion of the Work.

- .2 Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner, as estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.
- .3 Prior to being entitled to receive final payment, and as a condition precedent thereto, the Construction Manager shall provide the Owner, in the form and manner required by Owner, the following:

- .1 An affidavit that Construction Manager's obligations to all subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
- .2 Such other documents as required by the Project Manual from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Owner including but not limited to final releases of bond;
- .3 All product warranties, operating manuals, instruction manuals and other documents customarily required of the Construction Manager or reasonably required by Owner, including but not limited to those required elsewhere in the Contract Documents, as part

of its Project Closeout procedures;

ARTICLE 6 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

6.1 The Construction Manager shall submit a written Guaranteed Maximum Price (GMP) for Construction to the Owner when the Construction Documents are 100% complete. Work shall not commence prior to the issuance of a Building Permit by the Chief Building Official. This indicates that all mandatory requirements have been met (defined as Building Department code requirements.) Further, all agreed upon comments from all design phases are required to be incorporated into the drawings at this stage. If design review "approval" is withheld, the documents must be resubmitted. The GMP shall guarantee the maximum price for the construction cost of the project or designated part thereof, for phased projects, and shall be approved by the Owner. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 27 of the General Conditions. However, the actual price paid for the Work by the Owner shall be the actual cost of all Work subcontracts, supply contracts, direct labor costs, **direct supervision costs**, and direct job costs as defined under Article 26 of the General Conditions, plus the Construction Manager's fee or the GMP, whichever is less when the Work is complete. **OWNER SHALL NOT BE LIABLE FOR NOR SHALL IT PAY CONSTRUCTION MANAGER ANY SUMS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE. CONSTRUCTION MANAGER AGREES THAT ANY AND ALL SAVINGS BELONG AND REVERT BACK TO THE OWNER.**

.1 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Construction Manager's cost of Work. In addition to the cost of Work, the GMP will include an agreed upon sum as the construction contingency which is included for the purpose of accounting for unforeseen increases or decreases in the construction cost at the time bids are received and approved by the Construction Manager and Owner and/or unforeseen circumstances. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. The use of the contingency shall be subject to School Board approval as noted in General Conditions Article 1, Paragraph 1.1.12, if the amount requested exceeds Fifty thousand dollars (\$50,000.00) prior to disbursement to Construction Manager. The use of the contingency where the request does not exceed Fifty thousand dollars (\$50,000.00) shall be subject to the unanimous approval of the Chief Facilities Officer, Director of Construction, Project Manager, and Project Consultant, prior to disbursement to Construction Manager. In the event that there is a disagreement amongst the Construction Manager and the aforementioned staff, the request for use of the contingency shall be determined by the Owner. Documentation for use of the Contingency shall be determined by the Owner, included in the Project Manual and displayed in the monthly applications for payment. The Project Consultant and Owner shall verify actual costs. All Contingency Use Directives (CUDs) arising from the same cause and conditions shall be combined into one (1) CUD whenever possible.

.2 During the Construction Phase, subsequent to initial buyout procedures conducted in accordance with Article 3.4 of this agreement, an adjustment shall be made by the Construction Manager every month to increase or decrease the Buyout / Owner's Savings line of the schedule of values for subcontracts awarded during the period. This adjustment is to

be supported by a reconciliation including any and all supporting documentation required by the Owner to verify its accuracy.

- .3 All uses of the authorized contingency shall be authorized by Contingency Use Directive approved by the Owner before the contingency use is implemented. Any use of Buyout / Owner Savings shall be authorized by Change Order, approved by the School Board and subject to the provisions of this agreement for Change Orders.
- 6.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.
- 6.3 The Construction Manager shall submit the GMP Addendum on the Owner's approved form (Agreement Exhibit A) for approval by The School Board of Broward County, Florida.
- 6.4 **IF THE GMP PROPOSAL IS UNACCEPTABLE TO THE OWNER, OWNER MAY TERMINATE THE CONSTRUCTION MANAGER AS SET FORTH IN ARTICLE 36 OF THE GENERAL CONDITIONS.**

ARTICLE 7: CONSTRUCTION MANAGER'S FEES

- 7.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services, fees as set forth in Agreement Exhibit B. These fees may later be amended through the incorporation of the GMP.
 - .1 Preconstruction Phase - In the case where preconstruction phase fees are agreed upon and the Construction Manager's GMP is not accepted by the Owner and the Agreement is terminated, the Construction Manager shall be entitled to receive only that portion of the preconstruction phase fees representing all Work performed to date relating to the project. The Construction Manager may request payment for that part of the Contract Price allocable to Contract requirements properly provided during the preconstruction phase.
 - .2 Construction Managers fees - will be applied as a percentage of Cost of Work.
 - .3 Costs for Project General Conditions shall be set as a Lump Sum Cost and shall be included in the GMP. See Article 8 for Application for Payment procedures. Prior to incorporation into the approved GMP, the Construction Manager shall prepare a detailed schedule of General Conditions items and appropriate supporting documentation for review and approval by the Owner and Owner's Representative. The General Conditions listing and supporting documentation shall be provided in a format acceptable to Owner.
 - .4 Fee for Change Orders - In the event that the Owner approves an additive change in the work, the Construction Manager shall receive from the Owner Overhead and Profit, at the percentage of the cost of the work of the change order agreed upon in the GMP. This amount shall be the Construction Manager's exclusive remedy for such changes in the Work. In the event that the Owner approves a deductive change order for a reduction in the scope of work, the

Construction Manager shall deduct Overhead and Profit at the percentage of the cost of work deducted in the change order.

7.2. Construction Manager's Deliverables

.1 General

- .1 Summary Report / Recommendations (Agreement 3.2.1)
- .2 Preliminary Master Project Schedule and monthly updates (Agreement 3.2.2)
- .3 Existing Facility Analysis package, recommendations, Cost Estimates (Agreement 3.2.3)
- .4 Project Delivery options / packaging recommendations report (Agreement, 3.2.5)
- .5 Work Status Monthly Report (Agreement 3.2.6)
- .6 Project Manual (Agreement 3.2.7)
- .7 Market Analysis/sub-contractor report (Agreement, 3.2.8)

.2 Design Phase

- .1 Monthly Summary of project meetings (Agreement 3.3.1)
- .2 Document Reviews / report at each phase (Agreement 3.3.2, 3.3.5, 3.3.6).
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
- .3 Preliminary Master Project Schedule Updates (Agreement 3.3.7)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
- .4 Cost Estimates (Agreement, 3.3.4)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
- .5 Guaranteed Maximum Price (GMP) Manual (Agreement 3.3.12)

.3 Bidding and Award Phase

- .1 Proposed Subcontractor list with MWBE participation (Agreement 3.4.2).
- .2 Bid Packages List, Tabulation Sheet, Bid Support (Agreement 3.4.3)
- .3 Pre-bid conference attendance list and summary report (Agreement, 3.4.4)
- .4 Recommendations for award (Agreement, 3.4.5)
- .5 Schedule of Values (Agreement 3.4.7)
- .6 Buyout Reconciliation (Agreement 3.4.7)
- .7 Executed subcontract agreements (Agreement 3.4.5)

.4 Construction Phase

- .1 Monthly Schedule updates and reports (Agreement, 3.5.3)
 - .2 Summary of all meetings (Agreement 3.3.1)
 - .3 Preparation and submission of all close-out submittals (Agreement, 3.5.8)
 - .4 Written verification of punchlist items completion, including BCI items (Agreement, 3.5.9)
 - .5 Schedule of Values (Agreement 8.1).
 - .6 Buyout Reconciliation Updates (Agreement 6.1)
 - .7 Allowance usage log (Agreement 8.5)
 - .8 Contingency usage log (Agreement 8.5)
- .5 Warranty Phase
- .1 Warranty Summary Report at end of 6 months (50% of Warranty Phase fee) and 11 months (Balance of Warranty Phase Fee) Warranty Phase (Agreement 3.6.3)
- .6 Other Deliverables
- .1 Insurance Policies (Agreement 8.1.7)
 - .2 Payment Applications (Agreement 8.2 through 8.14)
 - .5 Agreement Execution and Contract Bonds (Agreement 9.1)
 - .6 Closeout documents as set forth in the Contract Documents.
- .7 Final Payment
- .1 Payment affidavits, release of lien and other requirements (Agreement 8.15)

ARTICLE 8 PAYMENTS TO THE CONSTRUCTION MANAGER

8.1 Schedule of Values:

- .1 Before the first Application for Payment for the Work, the Construction Manager shall submit to Owner a schedule of values allocated to various portions of the Work. Construction Manager's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner may, at its option, require. Construction Manager shall not front-end load its Schedule of Values and shall not imbalance its Schedule of Values. The allocated value of each item in the Schedule of Values shall only include its total cost. The Schedule of Values shall be used only as a basis for Construction Manager's Applications for Payment and shall only be so used after it has been approved in writing by Owner.
- .2 The Construction Manager shall maintain and update the Schedule of Values originally provided to the Owner with the GMP Addendum, as modified for approved Buyout Savings.
- .3 The Construction Manager's Schedule of Values apportions the GMP among the different elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Contractor's monthly Application for Payment.

- .4 The Schedule of Values shall be presented with such detail, and supported with whatever information the Owner reasonably requests as addressed in Article 8.5 of this Agreement.
- .5 The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof.
- .6 The Construction Manager shall supply a Schedule of Values as reflected in his CPM schedule to the OWNER. The Schedule of Values shall be updated monthly, only to reflect all subcontracts, buyouts, approved change orders and change directives.
- .7 No payments shall be made to the Construction Manager prior to the receipt of all insurance policies that are required by this agreement and the work being performed.
- .8 In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any Application for Payment that (i) Construction Manager have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement, and (ii) Construction Manager shall have furnished to Owner, if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of bond, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Owner, at Owner's discretion, may permit Construction Manager to furnish a bond satisfactory to Owner in lieu of such release or waiver indemnifying Owner against such claim. If such claim remains unsatisfied after payments are made, Construction Manager shall refund to Owner all money that Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.
- .9 Withholding Payment. Owner may appropriately adjust Construction Manager's Applications for Payment if Owner reasonably believes that any portion of the Work has not progressed to the point indicated in Construction Manager's Application for Payment, if adequate supporting documentation is not provided as addressed in Article 8.5 of the Agreement, or the quality of the Work covered is not in accordance with the Contract Documents. In addition, Owner may decide not to pay Construction Manager an appropriate amount because of subsequently discovered evidence or subsequent observations, to the extent necessary to protect itself from loss, because of but not limited to: (i) defective Work of which the Construction Manager has knowledge; (ii) third party claims filed or evidence indicating the filing of such claims; (iii) failure of the Construction Manager to make payments to Subcontractors or others for labor, materials or equipment pursuant to Construction Manager's contracts with such persons or entities; (iv) evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price allocable to the Work; (v) damage to Owner or another contractor, caused by Construction Manager or its subcontractors, and not paid by Construction Manager's insurance; (vi) evidence that the Work will not be completed by the Scheduled Final Completion Date, as the same may be adjusted by Modification and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (vii) persistent failure to carry out the Work in accordance with the Contract Documents.

- 8.2 Prompt Payment Act – Payments to the Construction Manager will be made pursuant to the Contract Documents and the Local Government Prompt Payment Act, Chapter 218, Florida Statutes, and any subsequent amendments thereto (“Prompt Payment Act”). To the extent that the provisions of Contract Documents differ with the requirements of the Prompt Payment Act, the provisions of the Prompt Payment Act will govern.
- 8.3 On or before the 25th day of each month after commencement of performance, but no more frequently than once monthly, the Construction Manager may submit an Application for Payment for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Construction Manager and Owner.
- 8.4 Said Application for Payment shall be in the format required in the Specification 01290 and include whatever supporting information as may be required by the Owner. Except for Applications for Payment for Design Services and pre-construction services, retainage shall be withheld from each monthly payment request, in an amount not to exceed ten percent (10%) of the approved payment. Pursuant to the requirements of Florida Statutes Section 255.078 (5), upon fifty percent completion, the retainage withheld from future payment applications will be reduced to five percent until the project has reached final completion and accepted by the Owner. Owner may, in Owner’s sole discretion, upon written request of Construction Manager, release portions of the retainage allocable to portions of the Work, which have been finally completed prior to Final Completion for all of the Work. Retainage shall be withheld and released in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act. Retainage shall not be withheld on fees as set forth in Article 7.1.
- 8.5 Applications for Payment shall be notarized and supported by such data substantiating Construction Manager’s right to payment as Owner may reasonably require. This shall include, but not be limited to invoices, subcontractor pay applications, subcontractor releases of lien, buyout savings reconciliation, allowance usage log, contingency usage log, and other documents as required by Owner. The format of the Application for Payment shall be the American Institute of Architects G702© certified and notarized by the Construction Manager and supported by the American Institute of Architects form G703© which shall agree to the schedule of values as described in this agreement. The Construction Manager’s final acceptance of the supportability and allowability of the charges submitted in the applications for payment is not inferred through the approval and signature of each monthly pay application that includes the referenced charges.
- 8.6 Each Application for Payment shall be signed by the Construction Manager and shall constitute the Construction Manager’s representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the requirements of the Contract Documents, that the costs being billed have actually been incurred and that the Construction Manager knows of no reason why payment should not be made as requested.
- 8.7 Thereafter, the Owner shall:
- .1 Review the Application for Payment and review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by the Contract Documents.

2. Approve in writing the amount which, in the opinion of the Owner, is properly owing to the Construction Manager.
- 8.8 The amount of each such payment shall be the amount approved for payment by the Owner less such amounts, if any, otherwise owing by the Construction Manager to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents.
- 8.9 The submission by the Construction Manager of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, or other encumbrance by any person whatsoever.
- 8.10 As a condition precedent to partial payment, the Construction Manager shall, as required elsewhere in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, and/or properly executed documents reflecting that all subcontractors, materialmen, suppliers or others having rights, have acknowledged receipt of all sums due pursuant to all prior Payment Requests.
- 8.11 Furthermore, the Construction Manager warrants and represent that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.
- 8.12 Not Used
- 8.13 When payment is received from the Owner, the Construction Manager shall pay all subcontractors, materialmen, laborers and suppliers the amounts justly due for all Work covered by such payment in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act. In the event such payments are not made in a timely manner the Owner may, in its discretion, invoke reasonable procedures in order to protect Owner's interest or Owner's desire to assist in having subcontractors, laborers, suppliers, materialmen or others paid. By the Owner invoking reasonable procedures, it shall not relieve the Construction Manager of its responsibilities for payments under the contract.
- 8.14 It is mutually agreed that any payments made under this Contract, including but not limited to final payment, shall not constitute acceptance of defective or improper materials or workmanship nor shall same act as a waiver or release of future performance in accordance with the Contract Documents.
- 8.15 Final Payment. Construction Manager's application for final payment shall be accompanied by a completed and notarized Certificate of Contract Completion. Any items required by the Contract Documents not previously submitted shall accompany the Application for Final Payment. Neither final payment nor amounts retained, if any, shall become due until Construction Manager submits to Owner: (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or shall be paid from funds received from Owner; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (iii) a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv)

consent of surety, if any, to final payment and (v) a final accounting of the Cost of Work. Acceptance of final payment shall constitute a waiver of all claims by Construction Manager.

- 8.16 Within seven (7) days of receipt of payment from the Owner, Construction Manager shall pay each Subcontractor, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payment to Construction Manager on account of such Subcontractor's work. The Construction Manager will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 8.17 Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner in writing.
- 8.18 Withholding Payments To Subcontractors - The Construction Manager shall not withhold payments justly due to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and project bookkeeping as required. Payments to subcontractors shall comply with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act.
- 8.19 Warranty Payments - To the extent a percentage of Construction Manager's fee or a dollar amount is due for services rendered during the warranty phase, Construction Manager shall receive 50% of said fee if the six (6) month warranty inspection work is satisfactorily completed and the balance due if the eleventh (11th) month warranty inspection work is satisfactorily completed.
- 8.20 Delayed Payments by Owner - Payments will comply with Section 218.70, Florida Statutes, and other relevant provisions of the Local Government Prompt Payment Act, as amended.
- 8.21 Underpayment by Construction Manager - If, in the performance of the Agreement, there is underpayment of moneys due from Construction Manager to consultants, Subcontractors, materialmen, laborers or suppliers, Owner may, at its option, withhold from Construction Manager, out of payments due it, an amount sufficient to pay to consultants, Subcontractors, materialmen, laborers or suppliers underpaid the difference between the amounts required to be paid to such consultants, Subcontractors, materialmen, laborers or suppliers and the amounts actually paid. The amounts withheld shall be disbursed by Owner to the respective consultants, Subcontractors, materialmen, laborers or suppliers to whom they are due, provided Owner shall consult with Construction Manager before disbursing such amounts to determine whether there are any outstanding disputes between Construction Manager and such persons or entities justifying the withholding of such amounts.
- 8.22 Right to Require Documentation and Audit. Owner may, as deemed necessary, require from the Construction Manager, support and documentation for any submission, including but not limited to applications for payment. Upon execution of this Agreement, the Construction Manager agrees that Owner shall have unrestricted access during normal working hours to all of Construction Manager's records relating to this project including but not limited to hard copy as well as electronic records for a period of three years after final completion.

ARTICLE 9 CONTRACT BONDS

- 9.1 The Agreement shall become effective and in full force only upon the execution of this agreement. The payment and performance bonds issued by a Surety Company acceptable to Owner in its sole discretion, such Surety being qualified and rated in accordance with the General Conditions, and approved by the United States Treasury Department and licensed to do business in the State of Florida shall be delivered with the executed GMP Addendum.
- 9.2 The GMP Addendum must be executed and signed by a resident agent having an office in Florida, representing such Surety Company, for one hundred per cent (100%) of the Contract price, said bond guaranteeing the performance of this Agreement and as security for the payment of all persons performing labor and providing materials in connection with this Contract.
- 9.3 The form of Bonds required is included in Article 29 of the General Conditions. This is in addition to any bonds of subcontractors or others.

ARTICLE 10 NOTICES

- 10.1 When any of the parties desire to give notice to the other, such notice must be in writing, sent by US 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 the paragraph. For the present, the parties designate the following as the respective places for given notice:

Party:		Address:
Owner:	SUPERINTENDENT OF SCHOOLS The School Board of Broward County, Florida	600 Southeast Third Avenue Fort Lauderdale, FL 33301 Attn: Mr. Robert Runcie
With Copy To:	Chief Facilities and Construction Officer	Office of Facilities & Construction 3775 SW 16th Street Fort Lauderdale, FL 33312 Attn: Mr. Leo Bobadilla
Construction Manager:	BBBBB	BBBBB BBBBB BBBBB
Surety:	BBBBB	BBBBB BBBBB BBBBB
Surety's Agent:	BBBBB	BBBBB BBBBB BBBBB
Project Consultant:	BBBBB	BBBBB BBBBB BBBBB

- 10.2 These addresses may be changed by either of the parties by written notice to the other party.

ARTICLE 11 AUTHORITY PROVISION

- 11.1 Each person signing this Agreement on behalf of either party 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.

ARTICLE 12 NON-DISCRIMINATION PROVISION

- 12.1 Non-Discrimination: The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

ARTICLE 13 CAPTION PROVISION

- 13.1 Captions – The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

ARTICLE 14 ASSIGNMENT PROVISION

- 14.1 Assignment – Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from The School Board of Broward County, Florida.

ARTICLE 15 EXCESS FUNDS PROVISION

- 15.1 Excess Funds – Any party receiving funds paid by The School Board of Broward County, Florida under this Agreement agrees to promptly notify The School Board of Broward County, Florida of any funds erroneously received from The School Board of Broward County, Florida upon the discovery of such erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by The School Board of Broward County, Florida.

ARTICLE 16
BACKGROUND SCREENING

- 16.1 Background Screening – Construction Manager agrees to comply with all requirements of Sections 1012.32, 1012.465 and 1012.467, Florida Statutes, as amended from time to time, and that Construction Manager, its agents, subcontractors 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 Owner in advance of Construction Manager or its personnel providing any services under the conditions described in the previous sentence. Construction Manager will 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 Construction Manager and its personnel. The Parties agree that the failure of Construction Manager to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Owner to terminate immediately for cause with no further responsibilities to make payment or perform any other duties under this Agreement.

Construction Manager agrees to require all its affected employees to sign a statement, as a condition of employment with Construction Manager in relation to performance under this Agreement, agreeing that the employee will abide by all background screening requirements, and also agreeing that the employee will notify the Construction Manager of any arrest(s) or conviction(s) within 48 hours of its occurrence. Construction Manager agrees to provide the Owner with a list of all of its employees who have completed background screening as required by the above-referenced statutes and who meet the statutory requirements contained therein. Construction Manager agrees that it has an ongoing duty to maintain and update these lists as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. Construction Manager further agrees to notify Owner immediately upon becoming aware that one of its employees who was previously certified as completing the background check and meeting the statutory standards is subsequently arrested or convicted of any qualifying offense. Failure by Construction Manager to notify Owner of such arrest or conviction within 48 hours of being put on notice and within 5 business days of the occurrence of qualifying arrest or conviction, shall constitute grounds for immediate termination of this Agreement for cause by Owner.

If Owner deems necessary, Owner will issue each employee a photo identification badge which shall be worn by the individual at all times while on Owner property when students are present. Construction Manager agrees to bear all costs relating to obtaining all required photo identification badges.

Construction Manager 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 Construction Manager's failure to comply with the requirement of this Section or Sections 1012.32, 1012.465 and 1012.467, Florida Statutes in addition to any other indemnification obligations imposed upon Construction Manager pursuant to Article 30 of the General Conditions and the laws of Florida.

ARTICLE 17
CONSULTANTS COMPETITIVE NEGOTIATION ACT

- 17.1 If the total fee paid to the Construction Manager exceeds \$195,000, the following provisions of the Consultants Competitive Negotiation Act, Section 287.055(5)a., Florida Statutes shall apply:

1) The Construction Manager shall execute and furnish to Owner a Truth-In-Negotiation certificate (Exhibit "___") stating that wage rates and other factual unit costs supporting compensation are accurate, complete and current at the time of executing the contract.

2) The original contract amount and any additions thereto shall be adjusted to exclude any significant sums when Owner determines the contract amount was increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs.

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

ARTICLE 18
COMPLIANCE WITH SCHOOL CODE

- 18.1 Construction Manager agrees to comply with all sections of the Florida K-20 Education Code, Title XLVIII, Florida Statutes as it presently exists, and further as it may be amended from time to time. Further, Construction Manager agrees that failure to comply with the Florida K-20 Education Code shall constitute a material breach of this Agreement and may result in the termination of this Agreement for cause by the Owner.

ARTICLE 19
PUBLIC RECORDS LAWS

- 19.1 This Agreement shall be subject to Florida's Public Records Laws, Chapter §119.011 et. Seq., Florida Statutes. Construction Manager understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. Construction Manager shall keep records to show its compliance with program requirements. Construction Manager and its sub-contractors must make available, upon request of Owner, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the Construction Manager which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Construction Manager shall retain all records for three (3) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1), and for a period of five (5) years. Exempt or confidential information shall not be disclosed unless authorized by law; Construction Manager shall destroy any duplicate records which are exempt from public records disclosure as set forth in Chapter 119. Upon termination of this agreement all public records in possession of Construction Manager must be transferred to Owner at no cost. If records are stored electronically the records must be provided in a compatible format to Owner's operating system.

ARTICLE 20
TAXES AND DIRECT OWNER PURCHASE OPTION

20.1 The Construction Manager has included in its GMP and shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Construction Manager which are legally enacted at the time the GMP is established, whether or not yet effective. Owner reserves the right to delete portions of the Work and to direct purchase materials to realize a true savings via an Owner Direct Purchase ("ODP") program. Construction Manager hereby agrees to permit Owner to direct purchase from his suppliers at prices quoted to Construction Manager and for Owner to retain any true savings generated thereby.

20.2 In accordance with the provisions of Article 20.1 of this Agreement, Owner may exercise its right to implement an Owner Direct Purchase/ Sales Tax Savings Program, with respect to this Agreement. This Article describes the procedures by which this program will be implemented and administered if the Owner subsequently determines to do so. Pursuant to these procedures, Owner may order and pay for all such purchases, as well as take title to all such purchases, directly from the supplier or manufacturer.

At the time the GMP is established, but not later than concurrently with submission of the required Schedule of Values, Owner, Owner's Representative, and Construction Manager shall endeavor to identify the specific items and the estimated costs of the potential Owner Direct Purchases ("ODP"). Construction Manager shall identify a separate line item cost for each potential ODP item. Construction Manager must clearly and separately identify any contingency or allowance amount associated with any ODP line items. The GMP must include the total cost of the Work, including the cost of the ODP items and their associated sales taxes.

Based upon its review of the Contract Documents, Construction Manager shall recommend potential ODP items to Owner and Owner's Representative. After reviewing the Construction Manager's recommendations and the applicable Contract Documents, and after consultation with the Owner's Representative, Owner shall make the final determination as to which items, if any, will be purchased as ODP items.

20.3 After Owner identifies the ODP items, Construction Manager shall prepare a standard purchase order requisition on a purchase order form provided by Owner, to specifically identify the materials which Owner has elected to purchase directly. The purchase order requisition form shall include the following information:

1. Project Name;
2. Construction Manager Name;
3. Manufacturer/Supplier Name;
4. Name, address, telephone number and contact person for Manufacturer/ Supplier;
5. Manufacturer or brand model or specification number of the item;
6. The quantity and unit of measure needed as estimated by Construction Manager;
7. The price quoted by the Manufacturer/Supplier for the materials or equipment identified;
8. All sales tax associated with the price quote;
9. Delivery address;
10. Delivery dates;
11. Delivery instructions;
12. Vendor identification number;
13. Mailing address for invoices.

All purchase order requisitions prepared by Construction Manager must be sent to Owner's Office of Facilities & Construction, with a copy to the Owner's Representative, and they must be expressly approved by Owner before they will be sent by Owner to the applicable Manufacturer/Supplier. In preparing the standard purchase order requisition, the Construction Manager shall include all terms and conditions, which may have been negotiated by the Construction Manager with the Manufacturer/Supplier (e.g. payment terms, warranties, etc.). To the extent any such terms or conditions differ from the standard terms and conditions included in Owner's standard purchase order requisition form, such differences must be specifically identified to Owner by the Construction Manager at the time the Construction Manager forwards the requisition to Owner for its review. All shipping expenses associated with any ODP item (including all freight insurance) must be included in the cost of that item and not charged as a separate item.

All purchase order requisitions prepared by Construction Manager must be submitted to Owner and Construction Manager no less than twenty-one (21) calendar days prior to the need for the ordering of the subject ODP item, in order to provide sufficient time for their review. Construction Manager is responsible for ensuring that all necessary attachments to the purchase order requisition (e.g., shop drawings, details, specification sheets, etc.) required to properly place the order with the Manufacturer/Supplier, have been attached to the purchase order requisition at the time it is sent to Owner for their review. Once approved by Owner, Owner shall forward the completed purchase order requisition, with all attachments, to the Manufacturer/Supplier, with a copy to Construction Manager.

The Owner shall take title to ODP items from the Manufacturer/Supplier at the time of purchase or delivery, as applicable, according to the terms of purchase and delivery. The Owner assumes the risk of loss with respect to ODP items in that it bears the economic burden of insurance for loss or damage, and directly enjoys the economic benefit of proceeds of such insurance as an additional named insured.

- 20.4 As ODP items are delivered to the job site, the Construction Manager shall visually inspect all shipments from Manufacturer/Suppliers, and approve the vendor's shipping record for material delivered. The Construction Manager shall assure that each delivery of an ODP item is accompanied by the appropriate documentation to adequately identify the purchase order number against which the purchase is made and to confirm that the correct type and quantity of the ODP item has been delivered in the appropriate condition. The Construction Manager's approval will include a legible signature (printed) of the person who inspected the delivered items, dated as of the date of delivery.

All invoices from the Manufacturer/Supplier must be directed and sent to Owner's Representative and Owner's Office of Facilities & Construction via the Construction Manager. It is the responsibility of the Construction Manager to review all such invoices and confirm their correctness before forwarding them on to the Owner's Representative and Owner for processing and payment. The Construction Manager shall verify in writing to Owner the accuracy of the invoice in relation to the delivery ticket and the ODP items actually delivered. The Construction Manager shall obtain from the Manufacturer/Supplier all releases, warranties and other necessary supporting documentation which may be required by Owner and shall insure that all such releases, warranties and supporting documentation have been attached to the invoice before forwarding the invoice to Owner for processing and payment. The Construction Manager also is responsible for obtaining from the Manufacturer/Supplier all operating information and manuals, spare parts and all other items required to be provided by the Manufacturer/Supplier. The

Construction Manager shall review all such items for compliance with the requirements of the Contract Documents and shall organize and deliver all such items to Owner as part of its requirements for achieving Substantial Completion of the Work.

Each month the Construction Manager, Owner and the Owner's Representative shall review the ODPs that have been delivered and paid for during that month. Construction Manager's shall prepare a log of ODPs, showing the amount equal to the value of any ODPs, including sales taxes, paid for by Owner. At a time of its choosing, but prior to completion of the Work, Owner shall prepare an appropriate Change Order, for Construction Manager's execution, which reduces the Contract Sum by the total cost paid by Owner for the ODPs, together with the amount of sales tax savings that have been realized as a result of Owner Direct Purchases. Further, the Change Order shall deduct from the GMP any remaining contingency or allowance balance associated with the subject ODP item.

Nothing in this Article 20 relieves the Construction Manager from its responsibility for the requisitioning of the order, scheduling, coordinating, insuring, delivery, unloading, storage, installation, repair, operation and warranty of all ODP items. All such obligations remain the responsibility of the Construction Manager and have been pay for by Owner as a part of the Contract Price (which always included these responsibilities and obligations) as fully as if there had been no Owner ODP purchase whatsoever.

In witness thereof, the said _____ (Construction Manager), and the Owner, The School Board of Broward County, Florida have caused this Agreement to be executed and their corporate seal affixed by and through their proper offices, thereunto duly authorized, on this day and year first above written.

OWNER

THE SCHOOL BOARD BROWARD
COUNTY, FLORIDA

CONSTRUCTION MANAGER

(please print or type name)

SEAL

By: _____
, Chair

By: _____
President of Corporation

By: _____
Superintendent of Schools

By: _____
Witness or Attest Secretary

Approved as to Form and Legal Content:

Office of the General Counsel

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME this day appeared _____, and,
_____, (Construction Manager) personally known to me to be the
persons described in and who executed the foregoing agreement and acknowledge that he executed the
same as his free act and deed for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of
_____, 201_____.

Notary Public State of Florida

(SEAL)

My Commission Expires:

ACKNOWLEDGMENT

The Surety acknowledges that it has read the foregoing Construction Contract and has familiarized itself with
the obligations of the Construction Manager and the Surety as stated therein, which obligations are agreed to
by Surety and are incorporated, by reference to the Construction Management Agreement, and the Payment
and Performance Bonds.

SURETY:

By: _____

Its: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed and sworn to by

_____ before me this _____ day of _____.

My commission expires:

(SEAL)

Signature – Notary Public

Printed Name of Notary

Notary's Commission No.

EXHIBIT A
TO CONSTRUCTION MANAGER AT RISK AGREEMENT

GMP AMENDMENT

THIS GMP AMENDMENT, made and entered into as of this _____ day of _____, 20____, ("GMP Amendment") amends that certain Agreement between Owner (The School Board of Broward County, Florida) and Construction Manager (_____), made as of the _____ day of _____, _____ for the following described project: _____ (Project)

WHEREAS, the Owner and the Construction Manager have agreed to amend the Agreement in the manner set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, in the Agreement and the other Contract Documents and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Construction Manager do hereby agree as follows:

1. This GMP Amendment is executed in connection with, and is deemed to be a part of the Agreement and the Contract Documents. Wherever the terms of this GMP Amendment and the terms of the Contract Documents are in conflict, the terms of this GMP Amendment shall govern and control. The terms used herein, unless otherwise defined in this GMP Amendment, shall have the meanings ascribed to them in the Contract Documents.
2. The following are hereby incorporated into the Contract Documents and made part thereof:
 - a. The drawings listed on **Attachment I** attached hereto, which drawings are made a part of the Contract Documents by this reference (the "Drawings"); and
 - b. The specifications listed on **Attachment II** attached hereto, which specifications are made a part of the Contract Documents by this reference (the "Specifications").
 - c. Those documents listed on **Attachment III**, Additional Contract Documents, attached hereto, are made a part of the Contract Documents by this reference.
3. The entire Scope of the Work for the Project is hereby incorporated into the work.
 - .1 The Date of Commencement for the construction shall be: _____
The Construction Manager shall achieve Substantial Completion of the entire Work not later than _____ calendar days from the Date of

Commencement (the "Contract Time") and final completion not later than _____ calendar days from the date of Substantial Completion. Failure to meet either the Substantial Completion or Final Completion dates shall be a material breach of this Agreement.

.1 The Owner and the Construction Manager acknowledge and agree that the Owner will suffer damages if the Construction Manager fails to achieve Substantial Completion of the entire Work, as defined in the Contract Documents, on or before the expiration of the Contract Time, which damages are difficult, if not impossible, to ascertain with any degree of certainty. Accordingly, if the Construction Manager fails to achieve Substantial Completion of the entire Work for this Project on or before the expiration of the Contract Time, liquidated damages (which are not intended as a penalty) shall be assessed against the Construction Manager in an amount of _____ dollars (\$) per calendar day.

.2 To the extent that the Contract Documents include specific provisions for liquidated damages to be applied separately for any Phase, Building or other portion of the Work prior to the required completion date or within the Contract Time for the entire Project, such liquidated damages shall be assessed based on the required completion dates and construction time durations set forth in the approved schedule for each such separate portion of the Work.

.3 The Guaranteed Maximum Price for the Project is hereby guaranteed by the Construction Manager not to exceed the sum of _____ (the "Project GMP"),

based upon the entire Scope of Work as described in the Contract Documents, including, but not limited to, the Drawings and the Specifications, subject only to additions and deductions by Change Order or Construction Change Directive, as provided in the Contract Documents. The GMP is more particularly itemized in the Schedule of Values prepared in accordance with the terms of the Agreement, which Schedule of Values is attached hereto and made a part of the Contract Documents by this reference. Included in the Schedule of Values and specifically identified herein, the contingency included in this guarantee maximum price is the amount of _____.

.4 Whether or not the Construction or Contract Documents enumerated in the Attachments to this GMP Amendment have actually been completed to the level of 50% or 100% as defined by this Agreement, the Guaranteed Maximum Price includes all Work reasonably inferable from such Construction and Contract Documents, the documents referenced in section paragraph 1.4 of the Construction Manager At-Risk Agreement and all responses issued by the Design

Consultant to CM's bidding inquiries and requests for information, as necessary to deliver a fully completed and finished working Project. To the extent there exists a conflict between the Construction and Contract Documents and any of the other aforementioned reference documents, the item of higher price, quantity or quality shall be included in the Guaranteed Maximum Price, without use of any Contingency.

- .5 Procedures and expenditures related to use of any Contingency and any Allowances included in this GMP shall comply with CMAR Agreement Section 6.1.1, Specification Section 01250 respectively, and all provisions of such documents are incorporated into and made a part of this Contract.
- .6 Procedures and expenditures related to direct purchases of materials by the Owner for this Project shall comply with Specification Section 01295, and all provisions of such documents are incorporated into and made a part of this Contract.
- .7 The Construction Manager shall provide Commercial General Liability Insurance, Automobile Liability Insurance, Professional Liability Insurance and Worker's Compensation Insurance in compliance with the provisions of Article 9 of the CMAR Agreement and Article 29 of the General Conditions of the Contract for Construction, satisfactory to the Owner's Office of Risk Management.
- .8 By executing this GMP Amendment, the Construction Manager acknowledges that it has ascertained all correct locations for points of connection for all utilities, if any, required for this Project; and has identified all clarifications and qualifications for this Project, if any.
- .9 The Construction Manager's on-site management and supervisory personnel for this Project are set forth on **Attachment IV**, attached hereto and made a part hereof by this reference.
- .10 To the extent that the Owner has authorized the Construction Manager, in writing, to perform a portion of the Work for this Project; with the Construction Manager's own forces, the salary and wage schedule for the Construction Manager's personnel performing such portion of the Work, agreed upon by the Owner and the Construction Manager, shall be as set forth on **Attachment IV**, attached hereto and made a part of the Contract Documents by this reference. The Construction Manager warrants and represents that the salary and wage schedule includes the lowest comparable market rates (including any and all benefits, contributions and insurance) charged by the Construction Manager for comparable contracts to other businesses and individuals for similar services, and that such rates are not higher than the standard paid at the

place of this Project.

- .11 The Construction Schedule for this Project is set forth on Attachment V, attached hereto and made a part hereof by this reference. The final accepted schedule for construction as required in the Construction Manager At-Risk Agreement and included in this GMP Amendment shall not be construed as the Detailed Initial or Baseline Schedule as set forth in the General Conditions of the Contract for Construction which schedule shall be prepared by the CM and separately submitted for review and approval after approval of the GMP Amendment by the Owner, as set forth in the General Conditions of the Contract for Construction.
- .12 Except as expressly provided herein above, all of the terms, conditions, covenants, agreements and understandings contained in the Contract Documents shall remain unchanged and in full force and effect, and the same are hereby expressly ratified and confirmed by the Owner and the Construction Manager.
- .13 This Amendment may be executed in several counterparts, each of which shall be deemed an original but not all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

BY: _____
Superintendent of Schools

SEAL

RECOMMENDED:

BY: _____
Leo Bobadilla
Chief Facilities Officer

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Attorney for Owner

FIRM NAME

BY: _____
Witness

BY: _____
Print Name

EXHIBIT B

LUMP SUM FEE BY TASK

Construction Management at-Risk for

AT

PROJECT NO. _____

FIRM NAME:	NAME/ADDRESS
DATE:	_____ (_____ MEETING)

As compensation for pre-construction services, the CM shall receive a fee as negotiated below:

PRE-CONSTRUCTION SERVICE	LUMP SUM FEE (PER TASK)
1. Phase I – Schematic Design	\$
2. Phase II – Design Development	\$
3. Phase III – 50% Construction Documents	\$
4. Phase III – 100% Construction Documents	\$
5. Phase IV - Bidding / GMP, Submittal / GMP, Negotiations / Award of GMP Amendment	\$
TOTAL PRE-CONSTRUCTION FEE	\$
CONSTRUCTION PHASE	
6. Construction Manager's Fee (percentage of COW)	%

EXHIBIT C

Construction Manager's Proposal

To be added at contract execution

EXHIBIT D

CMAR RFQ Document

To be added at contract execution

GENERAL CONDITIONS OF THE CONTRACT CONSTRUCTION MANAGEMENT AT RISK

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ARTICLE 1 DEFINITIONS

- 1.1 The Chief Facilities Officer, Facilities and Construction - An employee of the School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief Facilities Officer.
- 1.2 Construction Manager - The "party of the second part", of the Contract. The person, firm or corporation with whom a contract has been made with the Owner for the performance of the Work defined by the Contract Documents.
- 1.3 Contract Documents - The Contract Documents, which constitute the entire agreement between Owner and Construction Manager, consist of the CMAR Agreement Form and all exhibits thereto, the Proposal and all attachments and supporting documentation submitted by the Construction Manager in response to the Request for Qualifications/Proposals, requirements pursuant to Chapter 287, Florida Statutes on Public Entity Crimes, these General Conditions, all Addenda, and the Project Consultant's Agreement with the SBBC. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those listed above, those identified by the GMP Amendment and the Design Documents attached thereto, including but not limited to the Project Manual, Drawings, Specifications, any other General and Supplementary Conditions (Divisions 0 and 1), and all modifications issued after execution of the Contract.
- 1.4 Estimate - The Construction Manager's latest estimate of probable project construction costs.
- 1.5 Office of Facilities and Construction - The Owner's organizational entity which acts as liaison between the Consultant and Owner and provides day to day management and other professional services on the Owner's behalf.
- 1.6 Inspector of Record: See Article 1.1.29 of General Conditions.
- 1.7 Final Completion - Means that date subsequent to the date of Substantial Completion at which time the Construction Manager has completed all of the Work (or designated portion thereof) in accordance with the Contract Documents as certified by the Project Consultant and/or approved by the Owner. In addition, Final Completion shall not be deemed to have occurred until any and all governmental bodies, boards, entities, etc., which regulate or have jurisdiction of the Work, have inspected, approved and certified the Work and issued a certificate of occupancy or other required documentation.
- 1.8 Fixed Limit of Construction Cost (FLCC) - (See also 1.1.14) the Fixed Limit of Construction Cost, referred to hereinafter as FLCC, is the total dollar value of the Construction Manager's fees, contingency, and cost of the work.
- 1.9 Guaranteed Maximum Price: The GMP is the maximum amount of money that the Owner shall pay the Construction Manager for all the work described in the contract documents.
- 1.10 Journeyman - A person working in an apprenticeship occupation who has successfully completed a state registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation. "Established industry practices" means the number of years of training required by the majority of registered program

standards for the particular trade or occupation. A "certified Journeyman" is a journeyman who holds a State of Florida Certification or Broward County Certificate of Competency for a particular trade or craft."

- 1.11 Notice to Proceed - The term Notice to Proceed shall mean a written work order based on a defined scope of work, prepared by the Facilities Project Manager and issued to the Construction Manager.
- 1.12 Owner - The School Board of Broward County, Florida. The School Board of Broward County, Florida, through its Board, must approve all Agreements, changes in the scope of work, change orders, fees, final acceptance of the project, final payment and use of the contingency as set forth in Article 6.1 of the Agreement between Owner and Construction Manager.
- 1.13 Owner's Representatives - An entity hired by the School Board of Broward County to execute the delivery of projects and act as the Owner's Representative.
- 1.14 Owner's Construction Budget: Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is identified in the RFQ, including all contingency, Construction Manager fees, and costs of the work. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 6 of the Agreement between the Owner and Construction Manager.
- 1.15 Other Contractors - Any person, firm or corporation with whom a Contract has been made by the Owner for the performance of any work on the site, which work is not a portion the Work covered by the Contract.
- 1.16 Project Consultant - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services for development of the design and Contract Documents for the work of this Project and, any additional services as may be required during the construction and warranty phase.
- 1.17 Project Manager - A person who is designated by the Chief Facilities Officer to provide direct interface with the Construction Manager with respect to the Owner's responsibilities.
- 1.18 Project - The Project is the total scope of services and work to be performed under this Agreement. The Project consists of planning, design, permitting, construction and code inspection necessary to build the component parts of the project identified in project manual.
- 1.19 Phase - A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors.
- 1.20 Punch List - A list of items of work required by the Contract Documents which after inspection by the Owner and the Construction Manager has been termed to be deficient and/or inconsistent with the Contract Documents.
- 1.21 Subcontractor - A person or entity other than a materialman or laborer who enters into a Contract with Construction Manager for the performance of any part of Construction Manager's Work. The term "Subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The

term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

- 1.22 Sub-subcontractor - A person or entity other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.
- 1.23 Submittals - Are prepared by the Construction Manager or those working on his behalf (subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. The Construction Manager's submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.
- 1.24 Substantial Completion - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the work performed by Construction Manager and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy shall not be the sole factor in determining whether substantial completion has been achieved.
- 1.25 Subconsultant - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Owner or Construction Manager to furnish professional services to the project.
- 1.26 Superintendent or Construction Manager's Project Manager - The executive representative for the Construction Manager present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of superintending the work efficiently as designated.
- 1.27 Superintendent of Schools - The duly appointed executive officer of the Owner authorized to act by and through the School Board of Broward County.
- 1.28 Surety - The firm, corporation, or individual which is bound by the Contract Bond with and for the Construction Manager, and which engages to be responsible for the Construction Manager's acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.29 Building Code Inspector: Employees of The School Board of Broward County, Florida, who are certified by the Florida Department of Education (DOE). BCI's may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager and Project Consultant. Any references to "UBCI" within any documents shall mean BCI.
- 1.30 Work - The totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute

the whole or a part of the Project.

- 1.31 Written Notice - Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to him who gives notice. Electronic, FAX or other telephonic transmission shall not be considered as written notice.
- 1.32 Contingency Use Directive (CUD) - A CUD is issued and approved by the Owner for the purpose of accounting for unforeseen increases or decreases in the construction cost and/or to be utilized for unforeseen circumstances as set forth in Article 6.1 of the Agreement.
- 1.33 Change-Order - A change order is issued and approved by the Owner for additions or deletions in the scope of work or services provided by the Construction Manager. A change order shall increase or decrease the GMP subsequent to approval of the final GMP.
- 1.34 Construction Change Directive (CCD) - A CCD is issued and approved by the Owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner's sole discretion.
- 1.35 Design Documents - All the design documents approved by Owner pursuant to the Contract Documents, including, without limitation, those for use in construction of the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, the Schematic Design Documents, the Design Development Documents and the Construction Documents.
- 1.36 Modifications - means a Change Order or written amendment to this Agreement signed by both the Construction Manager and the Owner, or a Construction Change Directive issued by Owner.
- 1.37 Other Definitions - All terms that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.38 Prior Written Consent - consists of a written response from Owner noting acceptance. Acceptance is not inferred through the approval and signature of monthly pay applications that include the referenced items.
- 1.39 Buyout Savings - the difference, either positive or negative, between the line item amounts in the Board approved guaranteed maximum price (GMP) and the total sum of all contractual obligations between the construction manager and his subcontractors and vendors, self-performed work and unpurchased scope for that line item

ARTICLE 2 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS.

2.1 The Construction Manager represents that:

- .01 The Construction Manager and Subcontractors will fully examine and compare all Drawings, Specifications and other Contract Documents including but not limited to those relating to the

architectural, structural, mechanical, electrical, civil engineering and plumbing elements and have compared and reviewed all general and specific details on the Drawings and the various technical and administrative requirements of the Specifications.

- .02 With respect to all construction materials, labor, methods, means, techniques, and sequence of procedures required to carry out the Work or safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that Construction Manager is aware of as a result of the examination and comparison of the Contract Documents have been communicated to the Owner and Project Consultant in writing.
 - .03 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work shall be in accordance with the requirements of the Contract Documents.
 - .04 The Contract Time is adequate for the performance of the Work.
- 2.2 The Construction Manager is responsible for all means, methods, techniques and sequencing of construction.
- 2.3 If, after execution of this Construction Contract, the Construction Manager detects a conflict, discrepancy, error or omission in the Contract Documents then it shall immediately notify Project Consultant and Owner's representative prior to proceeding with the specific portion of the Work.

ARTICLE 3 INTENT AND INTERPRETATION.

- 3.1 With the respect to the intent and interpretation of this Contract, the Owner and the Construction Manager agree as follows:
- .01 The Construction Manager shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the Owner and the Project Consultant of any conflict, ambiguity, error or omission which the Construction Manager may find with respect to these documents before proceeding with the affected Work.
 - .02 It is the intent of Owner and Construction Manager that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all: performance by Construction Manager shall be required to the full extent consistent with and reasonably inferable from, the Contract Documents as being necessary to produce the results called for in Owner's program for this Project..
 - .03 The intent of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Work. The Construction Manager shall continually refer to drawing, specifications and other Contract Documents in this regard.
 - .04 In the event of any conflict, discrepancy, or inconsistency amongst any of the Contract Documents, the following shall control:
 - a) As between figures given on plans and scaled measurements, the figures shall govern;
 - b) As between large scale plans and small scale plans, the large scale plans shall govern;

- c) As between plans and specifications, the requirements of the specifications shall govern;
 - d) As between this Agreement and the plans and specifications, this Agreement shall govern.
- 3.2 The Owner shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder and may involve the Project Consultant with specific interpretations. This provision does not relieve the Project Consultant from their contractual obligations to the Owner.
- .01 The Owner shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of the Construction Manager, and shall render written decisions, within a reasonable time, on all claims, disputes, change order requests, substitution requests, requests for interpretation and other matters in question relating to the execution or progress of the Work or the interpretation of the Contract Documents.

ARTICLE 4 OWNERSHIP OF THE CONTRACT DOCUMENTS WHICH MAKE UP THE CONTRACT

- 4.1 Subject to any rights the Project Consultant may have in its Professional Services Agreement with Owner, all of the Contract Documents, as well as any other documents, intellectual property, software, computer-assisted material or disks relating to or regarding the Work, shall be and remain the property of the Owner. This shall be the case even if prepared, created or provided by the Project Consultant, Construction Manager, Subcontractor or others.
- 4.2 The Construction Manager shall have the right to keep a copy of the Contract Documents upon completion of the Work; provided, however, that in no event shall the Construction Manager use, or permit to be used, any portion or all of the Contract Documents on other projects without the Owner's prior written authorization.
- 4.3 The Construction Manager agrees to provide any and all items referred to in this Article to Owner upon demand by Owner. In the event Construction Manager fails to provide the requested Contract Documents to Owner as demanded, Construction Manager acknowledges that the Owner will need the requested documents or information and will be irreparably harmed and the Construction Manager will be subject to an injunction to provide same.

ARTICLE 5 TEMPORARY UTILITIES:

- 5.1 Water For Building Work: The Construction Manager shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Construction Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 5.2 Electrical Energy: The Construction Manager shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the Construction Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 5.3 Temporary Sanitary Facilities And Sewers: The Construction Manager shall provide and maintain in a neat and sanitary condition such accommodations and facilities for the use of his employees as may

be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues.

- .01 No nuisances will be permitted.
- .02 Upon completion of Work, such facilities shall be removed and the premises left in a sanitary condition.
- .03 Construction Manager is not permitted to use restrooms or other sanitary facilities within the Owner's existing building or on-site facilities unless the contrary is provided for elsewhere in the Contract Documents.

ARTICLE 6 OWNER OCCUPANCY

- 6.1 The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project in such conditions as will satisfy Owner operational requirements.
- 6.2 Construction Manager shall coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.
- 6.3 The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and shall provide required operational training, in equipment use, for building operators.
- 6.4 The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.
- 6.5 The Construction Manager shall continuously review and maintain As-Built Drawings.
- 6.6 The Owner will not occupy or take control of the project until the above items discussed in this paragraph have been completed and the Substantial Completion and Warranty requirements have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection six months after Owner Occupancy.

ARTICLE 7 JOB-SITE FACILITIES

- 7.1 The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives to perform their respective duties in the management, inspection, and supervision of construction.
- 7.2 Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the project.

**ARTICLE 8
CONSTRUCTION MANAGER'S STAFF**

- 8.1 The Construction Manager shall provide site personnel that are competent, English speaking and are able to communicate effectively.
- 8.2 The Construction Manager shall remove within fifteen (15) days, at the written request of the Owner's project manager or Chief Facilities Officer, any of Construction Manager's personnel who are deemed detrimental to the efficient management and completion of the project. Determination of whether an employee is detrimental is at the sole discretion of the Owner or its representatives.

**ARTICLE 9
LINES OF AUTHORITY**

- 9.1 The Construction Manager shall establish and maintain lines of authority for his personnel, and shall provide an organizational chart to the Owner and all other affected parties such as the Building Code Inspectors (BCI) of the Permitting Authority, the sub-contractors, the Project Consultant and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner's representative may attend meetings between the Construction Manager and his Subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to direct the subcontractor.

**ARTICLE 10
SCHEDULE AND PROJECT MANUAL PROVISIONS**

- 10.1 The Construction Manager shall provide subcontractors and the Owner, its representatives and the Project Consultant with copies of the Project Manual developed by the Construction Manager with the Owner's participation and approval, expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. It shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Managers work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. It shall advise the Owner's representatives of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. It shall hold job-site meetings at least once a week with the Project Construction Team and at least once each week with the subcontractors, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

**ARTICLE 11
QUALITY CONTROL**

- 11.1 The Construction Manager shall develop and maintain a program, acceptable to the Owner, to assure quality control of the construction. It shall supervise the work of all subcontractors providing

instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work.

ARTICLE 12 LICENSE AND PERMITS

- 12.1 All licenses necessary to commence and prosecute the Work to completion shall be procured and paid for by the Construction Manager or his subcontractors.
- 12.2 Educational facilities constructed by The School Board of Broward County, Florida are exempt from all county, district, municipal or local building codes and ordinances; therefore building permits will not be required. However, any and all other permits, bonds and/or other fees required for Work to be performed, including but not limited to Work in public right-of-ways and other Work otherwise outside the Owner's property line will be procured and paid for by the Construction Manager and will be considered part of the costs of the project.
- 12.3 All easements and rights-of-way will be procured and paid for by the Owner unless otherwise specifically provided within the Contract Documents.

ARTICLE 13 JOB SITE REQUIREMENTS

- 13.1 The Construction Manager shall perform or provide for each of the following activities as a part of his Construction Manager's fee:
 - .01 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.;
 - .02 Maintain a roster of companies on the project with names and telephone numbers of key personnel;
 - .03 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline;
 - .04 Provide labor relations management for a harmonious, productive project;
 - .05 Provide a safety program for the project to meet OSHA requirements;
 - .06 Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice;
 - .07 Provide a quality control program as developed under Article 11.1 herein above;
 - .08 Miscellaneous office supplies that support the construction efforts which are consumed by his own forces;
 - .09 Travel to and from his home office to the project site.
- 13.2 The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
 - .01 Schedule the services of independent testing laboratories (Selected and in privity of contract with the Owner) and provide the necessary testing of materials to ensure conformance to contract requirements;
 - .02 The printing and distribution of all required shop drawings.

ARTICLE 14
RESPONSIBILITY FOR WORK SECURITY

- 14.1 Construction Manager shall at all times conduct all operations under the Construction Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property.
- 14.2 Construction Manager shall promptly take such reasonable precautions as are necessary and adequate against any conditions which involve risk of a loss, theft or damage to its property.
- 14.3 Construction Manager shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions and shall be responsible for discovery, determination and correction of any such condition.
- 14.4 Construction Manager shall comply with all applicable laws and regulations in performance of the work.
- 14.5 Construction Manager shall cooperate with Owner on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by Owner.
- 14.6 These security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.
- 14.7 Such compliance with these security requirements shall not relieve Construction Manager of its responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner Construction Manager's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.
- 14.8 Construction Manager shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to Owner in a timely manner.

ARTICLE 15
SAFETY, PROTECTION OF WORK AND PROPERTY

- 15.1 Construction Manager shall be responsible for conducting all operations under this Construction Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. Construction Manager shall continuously and diligently inspect all work, material and equipment to discover any conditions which might involve such risks and shall be responsible for discovery and correction of any such conditions.
- 15.2 Safety Precautions and Programs:
 - 01 The Construction Manager, subcontractors and their employees shall prohibit the use of alcoholic beverages, smoking inside buildings and/or not in designated areas, food or beverages inside buildings, and carrying of firearms or weapons on school district property or be subject to removal and termination of subject employee.
- 01 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance on the Contract.

.02 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or other hazardous materials which has not been rendered harmless, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner and Project Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos, polychlorinated biphenyl (PCB) or other hazardous materials, or when it has been rendered harmless, by written agreement of the Owner, Construction Manager and Project Consultant.

.03 The Construction Manager shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl: (PCB) or other hazardous materials.

15.3 Safety of persons and Property.

.01 The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a) Employees on the Work and other persons who may be affected thereby;
- b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or Sub-subcontractors; and
- c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

.02 The Construction Manager shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety or person or property or their protection from damage, injury or loss.

- a) The Construction Manager and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health act (OSHA) of 1970.
- b) The Construction Manager shall prominently post and maintain at the job sites;
- c) OSHA 200: Log and summary of occupational injuries and illness.
- d) OSHA 2203: Provisions of the Act poster.

.03 The Construction Manager shall implement and maintain a continuing safety program applicable to all Construction Manager's employees, Subcontractors, and Sub-subcontractors, to include:

- a) Designating a responsible member of the Construction Manager's organization at the site as the Construction Manager's Safety Officer whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Construction Manager's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Project Consultant.
- b) Holding weekly safety meetings with employees and Subcontractors,

- c) Implementing OSHA Voluntary Protection Programs.
 - d) Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.
 - e) Compliance with the Drug Free Work Place Act of 1998, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Document 00457, Drug-Free Workplace Certification.
 - f) Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
 - g) Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their right in these regards.
- .04 When use of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
 - .05 The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Construction Manager, Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible, except damage or loss attributable to acts or omissions of the Owner or Project Consultant or anyone directly employed by either of them, or by anyone of whose acts either of them may be liable, and not attributable to the fault of negligence of the Contractor.
 - .06 The Construction Manager shall not occupy or permit any part of the construction site to be occupied so as to endanger its safety.
 - .07 Building materials, Construction Manager's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which it shall store all materials which would be damaged by weather. This shall in no manner relieve the Construction Manager from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as defined by applicable codes but not less than a 120 mile per hour wind uplift force. Construction Manager shall provide engineering or other evidence to prove compliance, if requested by the Owner.
 - .08 Construction Manager shall remove graffiti without damage to substrate or paint over graffiti within forty-eight (48) hours of its discovery.
- 15.4 Emergencies: In an emergency affecting safety of persons or property, the Construction Manager shall take all reasonable and necessary actions, to prevent damage, injury or loss.
 - 15.5 Construction Manager, as part of their safety plan, shall be required to provide a complete copy of all accident reports to Owner within five (5) days of any reported accident.

ARTICLE 16 MATERIALS

- 16.1 The Construction Manager shall provide materials and equipment as required in the Contract Documents. No substitution will be permitted except in the instance where a material is no longer available during the progress of the Work or is deemed by the Owner to be no longer suitable or appropriate for incorporation into the Work or for obvious economic benefits accruable to the Owner or as otherwise approved by the Owner in writing.
- 16.2 Any such substitution must be approved in writing by the Project Consultant and Owner prior to incorporation of the proposed substitution into the Work.
- 16.3 Proposed substitutions must be submitted for consideration from the Construction Manager to the Project Consultant and the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Construction Manager's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available.
- 16.4 Product delivery lead times shall not serve as a basis for any substitution request except for where approved in advance by the Owner. All additional costs incurred by the Owner as the result of any substitution shall be the responsibility of and borne by the Construction Manager.
- 16.5 The Construction Manager shall make written request to the Project Consultant and Owner for and obtain his written approval of the use of any materials proposed for use when "approval" materials are specified or a performance type specification is utilized without mentioning any standard by name.
- 16.6 If, in the opinion of the Construction Manager, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Construction Manager shall request a Change Order Proposal for modifying the Contract to incorporate the respective changes to the Work required, the Contract amount, and the Contract Time as beneficial to the Owner.

ARTICLE 17 WORKFORCE COMPOSITION

- 17.1 The following requirements apply to all aspects of the Work where skilled crafts or trades are to be utilized:
- 17.2 The ratio of journeymen utilized shall be two (2) journeymen to one other worker. When two (2) workers involved in the crafts are employed, the first employed shall be a journeyman, and the second may be either a journeyman or a worker.
- 17.3 The Construction Manager shall utilize at least one certified journeyman that holds a State of Florida Certification or a certificate of competency obtained through a proctored examination in Broward County for the respective crafts or trades required for the execution of the Work.
- 17.4 For trades or crafts for which licenses or Certificates of Competency are required in Broward County, no Work may be performed or person employed as a worker in that trade unless the Work is under the direct supervision of a master or certified journeyman, certified in that trade. A certified master or certified journeyman shall not provide direct supervision to more than three (3) other workers or

uncertified journeymen at a job site.

- 17.5 The Construction Manager shall post on the inside of the Construction Manager's on-site project office and maintain by monthly updating a current list, available for the Owner and Project Consultant's use, of the names, areas of specialty, and license or certificate numbers, or all journeymen, certified journeymen, and certified masters utilized for prosecution of the Work, including those used by Subcontractor.
- 17.6 Work shall not commence in a particular trade or specialty until the Construction Manager's posted list has been updated to include that particular trade or specialty.
- 17.7 The Owner will not consider requisitions for payment for Work completed by a particular trade or specialty unless Journeymen, certified Journeymen, or certified Masters of that respective trade or specialty have been properly included on the Construction Manager's posted list.
- 17.8 The format for the posted list should begin with the Construction Manager's company name; name of qualifier with their certificate or registration number; a listing of all the Construction Manager's employee names, work trade and work skill; journeymen with their license number or certificate of competency; or a designation as unskilled labor. The remainder of the list should follow the same format listing all the subcontractors and any other person performing labor on the project site. A copy of all licenses, certificates, registrations, and state registered apprenticeship documents should be kept on file in the Construction Manager's field office to substantiate his posted list.
- 17.9 Requirements for workforce quality specified above do not apply to those elements of the Work requiring only unskilled labor.
- 17.10 The Construction Manager shall employ no illegal aliens or other individuals not properly registered with and allowed to work by the United States Immigration and Naturalization Service (INS).
- 17.11 Construction Manager shall be assessed, and the Owner may deduct from each applicable Application for Payment, \$250 per day for failure to comply with these workforce composition requirements contained herein beginning three days after written notice of non-compliance is received by the Construction Manager.

ARTICLE 18

INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP.

- 18.1 All material and equipment provided and work performed shall be properly inspected by Construction Manager, and shall at all times be subject to quality surveillance, inspections, observations or quality audit by Owner, Facilities Project Manager and any inspectors conducting an inspection pursuant to code, law, regulations, etc.
- 18.2 Construction Manager shall provide safe and adequate facilities, and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit.
- 18.3 The Construction Manager shall permit and facilitate inspection of the Work by the Owner, Project Manager and Inspectors for any governmental agency, authority, or board including but not limited to Uniform Building Code Inspectors (BCI).
- 18.4 Owner also reserves the right to designate others such as consultants, commissioning authorities, test

and balance agents, forensic specialists, etc. to conduct inspections during or subsequent to the Work as Owner in its discretion desires.

- 18.5 Owner shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its Subcontractors for such quality surveillance, observation or quality audit and to determine the status of the Work.
- 18.6 In the event the Owner requires a factory inspection, the Construction Manager shall notify the suppliers that the material shall not be produced or fabricated without due notice to the Owner and an opportunity for such inspection.
- 18.7 If any designated Work should be covered up without approval or consent of the Owner, it must, if required by the Owner, be uncovered for examination at the Construction Manager's expense.
- 18.8 If any material, equipment or workmanship is determined by Owner or Inspector either during performance of the Work or on final quality surveillance, or during any applicable warranty period, to be defective or not complying with the requirements of this Construction Contract, Owner or Inspector will notify Construction Manager in writing that such material, equipment or portions of the Work is rejected and Owner reserves the right to withhold payment on any such item or seek compensation from Construction Manager for same. Thereupon, Construction Manager shall, at its own expense, immediately remove, replace or correct such defective material, equipment or portions of the Work by making the same comply strictly with all requirements of the Contract Documents. The Construction Manager shall be responsible for the costs of any additional site observations, special inspections and/or testing, or other activities of the Owner made necessary by the correction of such defective materials, equipment or portions of the Work.
- 18.9 Neither the failure to make such quality surveillance, observation or quality audit, nor to discover defective workmanship, materials, or equipment, shall prejudice the rights of Owner to correct or reject the same as hereinafter provided.

ARTICLE 19 ADMINISTRATIVE RECORDS

- 19.1 The Construction Manager will maintain at the job site, unless otherwise agreed to in writing by the Project Manager, on a current basis, files and records such as, but not limited to the following:
 - .01 Contracts or Purchase Orders, Shop Drawing Submittal/Approval Logs, Equipment Purchase/Delivery Logs, Contract Drawings and Specifications with Addenda, Warranties and Guarantees, Cost Accounting Records, Sales Tax Recovery Status Report, Labor Costs, Material Costs, Equipment Costs, Cost Proposal Request, Payment Request Records, Meeting Minutes, Cost-Estimates, Lab Test Reports, Insurance Certificates and Bonds, Contract Changes, Purchase Orders, Material Purchase Delivery Logs, Technical Standards, As-Built Marked Prints, Operating & Maintenance Instruction, Daily Progress Reports, Monthly Progress Reports, Correspondence Files, Transmittal Records, Inspection Reports, Bid/Award Information, Bid Analysis and Negotiations, Punch Lists, Project Manual, Records.
- 19.3 The project records shall be available at all times to the Owner and Project Consultant for reference or review.

ARTICLE 20
OWNER'S RESPONSIBILITIES

- 20.1 Owner's Information - The Owner shall provide full information regarding its requirements for the project to the Construction Manager.
- 20.2 Project Consultant's Agreement - The Owner shall retain a Project Consultant to design and prepare construction documents for the project. The Project Consultant's services, duties and responsibilities are described in the Agreement between the Owner and the Project Consultant, a copy of which will be furnished to the Construction Manager.
- 20.3 Site Survey and Reports - The Owner shall furnish all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description of the project.
- 20.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures and for permanent changes in existing facilities.
- 20.5 Drawings and Specifications - The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.
- 20.6 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense.
- 20.7 Project Faults or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give prompt written notice thereof to the Construction Manager and Project Consultant.
- 20.8 Owner's Reviews, Inspections, Approvals, And Payments Not A Waiver - Owner's review, inspection, or approval of any Work, Design Documents, Applications for Payment or other submittals to Owner by Construction Manager shall be solely for the purpose of determining whether the same are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner or Owner's representative of such Work or documents shall relieve Construction Manager of its responsibility for the performance of its obligations under the Contract Documents or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Contract Documents shall not relieve Construction Manager of responsibility for the performance of its obligations under the Contract. Payment by Owner pursuant to the Contract Documents shall not constitute a waiver of any of Owner's rights under the Contract Documents or at law, and Construction Manager expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.
- 20.9 Delay Or Forbearance Not Waiver - Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Contract Documents or to require compliance with any obligation of Construction Manager under the Contract Documents shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.
- 20.10 Right to Stop Work - If the Construction Manager fails or refuses to perform the Work in accordance with the Contract Documents, or is otherwise in breach of the Contract Documents in any way, Owner

may, at its option, instruct Construction Manager to stop the Work or any part thereof. Upon receipt of such instruction from Owner in writing, Construction Manager shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instruction to stop work has been corrected, no longer exists, or Owner instructs that the Work may resume.

- 20.11 Right to Perform Work - In the event Owner issues instructions to stop the Work and in the further event that Construction Manager fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instruction to stop work will be eliminated or corrected, then Owner shall have the right to carry out the Work with its own forces, or with the forces of other contractors, and Construction Manager shall be fully responsible for the cost incurred in performing such Work. The rights set forth in this Section herein shall be in addition to, and without prejudice, of any other rights and remedies Owner may have under the Contract Documents, at law or in equity.

ARTICLE 21 ADMINISTRATION OF THE CONTRACT

- 21.1 The Construction Manager will provide Administration of the Subcontracts. The Owner will provide administration of the contract between Owner and Construction Manager.
- 21.2 Neither the Project Consultant, Owners Representative, nor the Owner will be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work or for the acts of omission or commission of the Construction Manager, its Subcontractors or their agents or employees or any other person performing any of the work.
- 21.3 The Owner will have the authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing. Neither the Owner's authority to act under this Paragraph, nor any decision made by it in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner to the Construction Manager, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 21.4 The Construction Manager shall forward all communications to the Owner's Representative and copy to the Project Consultant.
- 21.5 The Construction Manager shall submit Applications for Payment to the Owner for approval prior to Payment to the Construction Manager.
- 21.6 The Project Consultant shall approve shop drawings for design only, the Construction Manager being responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Drawings and Specifications and other Contract Documents.
- 21.7 The duties, responsibilities and limitations of authority of the Project Consultant and the Owner will not be modified nor extended without written consent of the Construction Manager, the Project Consultant, and the Owner.
- 21.8 Lines of Communication - During pre-construction and construction activities Construction Manager shall direct all communications to the Project Manager with a copy to Project Consultant. The Owner and Project Consultant shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality, except in cases of emergency and/or threat to property or person.

- 21.9 Forms. Construction Manager shall only use Owner's standard forms for Change Orders, Applications for Payment, and any other forms Construction Manager may be required to complete pursuant to the Contract Documents.

ARTICLE 22 INSPECTION

- 22.1 Construction will be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors working for the Owner and/or other governmental authorities.
- 22.2 Code Inspections - All projects require detailed code compliance inspections during construction in disciplines determined by the inspecting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.
- 22.3 The Construction Manager shall notify the appropriate inspector(s), no less than 24 hours in advance, that the work is ready for inspection and before the work is covered. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the Permitting Authority. All costs for uncovering and reconstruction shall be borne by the Construction Manager.
- 22.4 All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality.
- 22.5 Cost for all reinspection of work found defective and subsequently repaired shall be borne by the Construction Manager and corresponding subcontractor.

ARTICLE 23 DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

- 23.1 In the event that the Construction Manager covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner, such work shall be uncovered and displayed for the Owner's inspection upon request, and shall be reworked at no cost in time or money to the Owner.
- 23.2 If any of the work is covered, concealed or obscured in a manner not covered by Article 23.1 above, it shall, if directed by the Owner, be uncovered and displayed for the Owner's inspection. If the uncovered work conforms substantially with this Contract, the costs incurred by the Construction Manager to uncover and subsequently replace such work shall be borne by the Owner; otherwise, such costs shall be borne by the Construction Manager.
- 23.3 The Construction Manager shall, at no additional cost in money to the Owner or extension of time, correct work rejected by the Owner as defective or failing to conform to this Contract. Additionally, the Construction Manager shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.
- 23.4 In addition to its warranty obligations set forth elsewhere herein, the Construction Manager shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months following the date of Owner Occupancy of the Project or a designated portion thereof.

- 23.5 The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work.
- 23.6 In such event, the Contract Price shall be reduced, at Owner's option, by the greater of (i) the reasonable costs of removing and correcting the defective or nonconforming work, or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work.
- 23.7 If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Construction Manager shall, upon written demand from the Owner, pay the owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 24 SUBCONTRACTS

- 24.1 The Contract Documents make no attempt to fix the scope of the Work of any Subcontractor nor the responsibilities of any such Subcontractor, it being understood that the Construction Manager shall fix the scope of all Work and responsibilities of the Subcontractor. Construction Manager shall not replace Subcontractor without good cause. Construction Manager will disclose any related party relationship in a bidding subcontractor in writing prior to the award of contracts. For the purposes of this agreement, a related party relationship shall constitute any instance of common ownership, common management, or an ownership stake in the bidding subcontractor.
- 24.2 The Construction Manager shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:
- .01 The general form of Subcontract Agreement used by the Construction Manager within thirty (30) days of execution of the GMP Addendum.
 - .02 Updated listings of Subcontractors denoting changes to the list submitted within ten (10) days of said change.
 - .03 Copies of executed Subcontractor Contracts within ten (10) days of their execution.
 - .04 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application For Payment submitted by the Construction Manager.
 - .05 All contracts with Subcontractors shall incorporate by reference the terms and conditions of the Contract Documents.
- 24.3 The Construction Manager shall cause and require to be included in all Subcontracts a provision for the benefit of the Owner binding the Subcontractors to remain bound by the Subcontracts in the event the Construction Manager is replaced by another Construction Manager pursuant to the term of the Contract Documents. The Construction Manager shall also include in all Subcontracts a provision requiring the Subcontractor, in the event of the Construction Manager's termination, to consent to the assignment of their Subcontracts to the Owner.
- 24.4 The Owner may at any time request from the Subcontractors, or any of them, a sworn statement of account with the Construction Manager and the Construction Manager shall cause to be included in all

Subcontracts a requirement that the Subcontractors provide said sworn statement upon Owner's request.

- 24.5 Each Subcontractor and supplier must agree to assign all of its warranties to Owner. In addition each Subcontractor and supplier must warrant all of its Work, equipment, materials and labor to Owner in accordance with the terms and provisions of its contractual obligations to Construction Manager and any legal or statutory provisions that apply to its work, materials or equipment.
- 24.6 Owner may at its discretion require Construction Manager to have major sub-subcontractors or suppliers comply with the requirements of this Article or other provisions of the Contract Documents.
- 24.7 Any disputes which may arise in this connection between the Construction Manager and any Subcontractor must be settled between the parties concerned and the Owner will not undertake, nor be in any way responsible for, the settlement of such disputes.
- 24.8 No Subcontractor shall under any condition relieve the Construction Manager of his liabilities and obligations to the Owner under his Contract and the Construction Manager shall be solely responsible to the Owner as provided herein.
- 24.9 All subcontracts shall provide:
- .01 LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
 - .02 That the subcontractor's exclusive remedy for delays in the performance of the contract caused by any events beyond its control, including delays claimed to be caused by the Owner or Project Consultant or attributable to the Owner or Project Consultant and including but not limited to claims based on breach of contract or negligence, shall be an extension of its contract time.
 - .03 In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are computed in accordance with General Conditions Exhibit C.
 - .04 Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.
 - .05 Each subcontract shall require that any claims by subcontractor must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.
- 24.10 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 24.11 Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Project Consultant. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner

must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety.

24.12 Subcontracts to be provided - The Construction Manager shall include a copy of each subcontract, including the general and supplementary conditions, in the project manual.

24.13 Bonding of Subcontractors - The Construction Manager shall submit proof, in the form of copies of properly executed bond forms, that the following major subcontractors have provided a performance bond and a payment bond to the Construction Manager and Owner as dual obligees with a corporate surety approved by the United States Treasury Department and authorized to do business in the State of Florida and otherwise acceptable to the Owner:

- HVAC/Mechanical
- Electrical
- Plumbing
- Roofing
- Shell Contractor

.01 If the value of a subcontract listed above is below \$200,000, the Subcontractor Bonding requirement for that respective subcontract may be waived by the Owner, at its sole discretion, for M/WBE Subcontractors participating in the Owner's M/WBE Subcontractor Programs as described elsewhere in the Contract Documents. The Construction Manager may bond any subcontractor whose contract exceeds \$100,000.00 which shall be an expense to the Owner if approved in writing by the Owner.

.02 The respective performance and payment bonds shall:

- a) Require the Surety to perform the Subcontract and to pay all bills and invoices for labor done and materials provided in the performance of the Work, including any guarantee or warranty period provided for in the Contract Documents.
- b) Be on the forms as provided by the Owner. No other forms will be acceptable.
- c) Executed under corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or any attorney-in-fact. The Owner may request the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
- d) In case of default or other proceedings on the part of the Subcontractor, actions for all expenses incident to ascertaining and collecting losses under the bond, including reasonable attorney's fees for same, shall be covered by the bond.
- e) Bonding companies acceptable to the Owner are bonding companies which are United States Treasury Department approved bonding companies, qualified and rated in accordance with Article 29 below and limited in bonding ability to the current United States Treasury Department standing for net limit on any one risk at the time of execution of the Subcontract.
- f) Any expenses related to non-conforming bonds shall be the sole responsibility of Construction Manager.

.03 The owner reserves the right in its sole discretion to accept a Subguard program in lieu of

subcontractor bonds.

ARTICLE 25 CONSTRUCTION MANAGER'S FEES

- 25.1 Payment for Construction Services. Construction Manager's Fee related to the construction services rendered shall be limited to the percentage, shown on Exhibit B of the CMAR Agreement (and as outlined in General Conditions Exhibit D), of the Cost of Work. Cost of Work for the purposes of computing Construction Manager's Fees shall include all costs incurred in completion of the work as defined in Article 26 excluding any contingency or allowances.
- 25.2 Costs and Expenses Included in General Conditions / General Requirements Fee - The following (a non-exclusive list) shall be included in the Construction Manager's General Conditions / General Requirements for services during the Construction Phase:
- .01 Salaries or other compensation of the Construction Manager's employees at the Project site.
 - .02 The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on General Conditions Exhibits C.
 - .03 General operating expenses incurred in the management and supervision of the project.
 - .04 Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and other supplies.
 - .05 Other General Conditions - General Conditions, which are not Cost of the Work, as defined in Article 26 below, include but are not limited to:
 - Field Office Rental
 - Field Office Security
 - Computers
 - Pest Control
 - Trash Hauling Equipment
 - CPM Consultants
 - Drug Testing
 - Quality Control Systems
 - Telephone Systems And Associated Charges
 - Trash Chutes
 - Surveys And Layouts
 - Safety Rails
 - Safety Inspections
 - Parking Space
 - Field Office Setup
 - Field Office Furniture
 - Copy Machines
 - Postage
 - As Built Drawings
 - Security Guards
 - Living Expenses
 - Daily Cleanup
 - Trash Dumpsters And Associated Fees
 - Cleanup/Safety Labor
 - Portable Toilets And Tanks
 - Safety Supplies
 - Water/Ice/Cups
 - Barricades
 - Field Office Janitorial
 - Salaries At Project Site
 - Fax Machines
 - Couriers
 - Closeout Documents
 - I.D. Badges
 - Progress Photographs
 - Final Cleaning
 - Blueprints And Copies Of Blueprints
 - Radios
 - Job Signs
 - First Aid Supplies
 - Fire Extinguishers
 - Small Tools

- Temporary Fencing
- Material Unloading
- Golf Carts
- General Purpose Carpenters
- Horizontal And Vertical Transportation Of Materials And Personnel
- Electric Charges
- Material Hoists
- Punch Lists
- Temporary Plywood Partitions
- Temporary Storage Containers
- Water Charges
- Personnel Hoists
- Storage
- Temporary Heat

- 25.3 The costs of premiums for all insurance and bonds (including Subguard) which the Construction Manager is required to procure by this agreement specifically for the construction project.
- 25.4 Any General Condition / General Requirement Cost(s) line item that inadvertently is included in a Cost of Work item and appears on the approved Cost of Work Schedule of Values Application for Payment forms shall be removed immediately and any payment made to the CM of this line item shall be reimbursed to the Owner upon being identified on the subsequent Payment Application.

ARTICLE 26 COST OF WORK

- 26.1 Definition - The term Cost of Work shall mean direct costs necessarily incurred in the Project during the Construction Phase for Construction services, paid by the Construction Manager less any reimbursement for scrap value and cash or trade discounts. Cost of Work does not include those fees and other costs set forth in Article 25. Cost of the Work shall include the items set forth below in this Article.

THE OWNER AGREES TO PAY THE CONSTRUCTION MANAGER FOR THE COST OF WORK AS DEFINED IN THIS ARTICLE. SUCH PAYMENT SHALL BE IN ADDITION TO THE CONSTRUCTION MANAGER'S FEES STIPULATED IN ARTICLE 25 OF THE GENERAL CONDITIONS.

26.2 Direct Cost Items

- .01 Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to contract under this Agreement.
- .02 Construction Manager supplied heavy equipment used on the project shall be priced for contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used. Further, for contractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to the fair market value of the piece of equipment when first brought on to the job site. Fuel necessary to operate the equipment will be considered as a separate direct cost. Maintenance and Repairs on owned equipment are reimbursed through the rental rate.

EXCEPTION: Tools and equipment with a cost less than \$1,000 shall be considered part of the Construction Manager's General Conditions and shall not be considered to be part of Project

Costs.

.03 Not Used

- .04 Cost including transportation and maintenance of all materials, supplies, equipment and tools not owned by the workmen, which are employed or consumed in the performance of the work. Charges for material shall be the Construction Manager's net actual cost for the purchase of the material required to complete the Work. A reasonable allowance shall be made for waste and scrap. All materials purchased that exceed the quantities required to complete the work shall be returned or sold for scrap, with the proceeds credited to the Owner. Credits for cost reductions available to the Construction Manager due to trade discounts, free material credits, and/or volume rebates will accrue to the benefit of the Owner. Cash discounts available on material purchases shall be credited to Owner if the Construction Manager is provided Owner funds in time for Construction Manager to take advantage of any such cash discounts. The Construction Manager is required to notify the Owner should the cash discount on a particular purchase equal or exceed \$1,000, to allow the Owner the opportunity to participate in the cash discount.
- .05 Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- a) Proposed rental rates and related fair market values for Contractor owned (affiliate owned, subsidiary owned, or related party owned) equipment shall be submitted to and approved by Owner prior to being used in connection with the Work. The projected usage for each piece of equipment proposed to be rented, and estimated total rentals shall be submitted for approval in advance in a form satisfactory to Owner so that an appropriate lease versus buy decision can be made.
 - b) Equipment rented from third parties shall be priced at the net actual rental cost, considering all trade and other discounts available to the Construction Manager. Costs of third party or rental equipment supplier insurance shall be declined and the insurance of such equipment shall be under the insurance program for the entire project. Each piece of equipment to be rented shall have hourly, daily, weekly, and monthly rates submitted to and approved by Owner in advance before equipment rental charges will be considered reimbursable.
 - c) The reimbursable equipment rental rates shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Owner and Contractor will use the applicable portions of the latest edition of the Army Corps of Engineers equipment rental rate guide (Construction Equipment Ownership and Operating Expense Schedule exclusive of the costs for fuel, filters, oil and grease) to mutually agree in advance on hourly, daily, weekly, and monthly rental rates to use during the project. If these two reference sources do not contain specific listings for pieces of equipment to be rented, the two parties may mutually agree to reimburse the Contractor up to 75% of the current competitive rental rates from local third party equipment rental companies.
 - d) The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 75% of the fair market value of such equipment at the time of its commitment to

the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice and submitted to the Owner along with a proposed fair market value in accordance with the procedure outlined above. The fair market values to be used for purposes of this contract clause will be subject to advance written approval of the Owner. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for like pieces of equipment will be combined if the pieces of equipment were not used at the same time.

- e) Fair market value for used material and equipment as referred to in this contract shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.
- f) Rental charges for equipment which is not owned by Contractor or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable, will be reimbursable at actual costs, as long as rental rates are consistent with those prevailing in the locality. Arrangements such as rent-to-own shall be made known to and shall accrue to the benefit of the Owner. Any and all equipment acquired during this project due to a rent-to-own arrangement shall be the property of the Owner. At the conclusion of the project any of this equipment may, at the discretion of the Owner, be sold to the Construction Manager or others at a price to be negotiated at that time.
- g) All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under this contract except as covered by insurance procured for the work
- h) The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to the Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition. At the completion of the project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Owner, or at Owner's option, Contractor may keep any such equipment for an appropriate credit to job cost, which will be mutually agreed to by Owner and Contractor.
- i) All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repair and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

- .06 No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

- .07 If pre-approved by the Owner in writing, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP Schedule of Values breakdown where it is deemed advantageous due to schedule or economic benefit. Bidding, documentation, and reimbursement of self-performed work is subject to the provisions outlined in Articles 3.4.9 and 3.5.4 of the Agreement.

26.3 COSTS NOT TO BE REIMBURSED

- .01 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office. Bonuses, profit sharing, and any discretionary form of compensation or fringe benefits.
- .02 Expenses of the Construction Manager's principal office and offices other than the Project site office.
- .03 Construction Manager's capital expenses, including interest on Construction Manager's capital used for the Work.
- .04 Any cost not specifically and expressly described in subsection 26.2 above.
- .05 Cost which would cause the GMP to be exceeded (other than adjustments pursuant to the terms herein for Change Orders and Construction Change Directives).
- .06 Cost of the Construction Manager's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, the Construction Manager should not plan to perform any such computer related services or alternatives at the field office when such service or functions can be performed at the Construction Manager's home or branch offices, or other outside service locations.

Any personal computer applications and related costs or remote job entry data functions and related costs which will be incurred by personnel at the job site must receive advance written approval from the Owner to be considered a reimbursable cost, otherwise the associated cost will not be paid.
- .07 Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project will only be reimbursed with prior written approval of the project manager.
- .08 Costs of subcontractors bonds not required by this agreement or approved in writing by Owner.
- .09 Payment and performance bonds, including individual subcontractor bonds and/or Subguard insurance, that results in cumulative coverage in excess of the agreed upon Guaranteed Maximum Price, without prior written consent from the Owner. Deductibles paid by Construction Manager on any insurance claim will not be reimbursed unless the loss could not have been reasonably avoided by Construction Manager and/or all subcontractors had it reasonably performed all contractual safeguards.
- .10 Costs due to negligence or willful misconduct of the Construction Manager, Subcontractors, or suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

- .11 Tools and equipment with a cost of \$1,000 or less.
 - .12 Discretionary labor benefits such as, but not limited to: cost of living adjustments, auto allowances, etc. unless previously approved by Owner.
 - .13 Overtime wages not approved in writing by the Owner prior to the Construction Manager incurring the cost.
 - .14 Any costs or fees in excess of industry standards for the applicable benchmarks set forth in General Conditions Exhibit D.
 - .15 Costs resulting from failure of Construction Manager or any subcontractor to procure and maintain insurance by the Contract Documents.
 - .16 Costs to replace or pay for lost or stolen machinery or equipment or materials. However, Construction Manager may seek to recover replacement cost from insurance, sureties, Subcontractors, suppliers, or other such third parties.
 - .17 The cost for any legal, accounting or other professional services except to the extent provided in Article 26.2 above.
 - .18 Penalties, fines, or costs imposed by governmental authorities in connection with, or resulting from any violations for noncompliance with laws, regulations, codes, ordinances, or directives by the Contractor or any subcontractor.
 - .19 Costs associated with the Construction Manager's failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom, unless such failure is due to the failure of the Drawings and Specifications to conform with the laws and regulations applicable thereto.
 - .20 Costs of accelerating the Work to the extent caused by the negligence or default of the Contractor or any subcontractor of any tier.
- 26.4 Any non-reimbursable cost(s) line item that inadvertently is included in a Cost of Work item and appears on the approved Cost of Work Schedule of Values Application for Payment forms shall be removed immediately and any payment made to the CM of this line item shall be reimbursed to the Owner upon being identified on the subsequent Payment Application.

ARTICLE 27

CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVES

- 27.1 The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project shall be authorized by Change Order (CO) or Construction Change Directive (CCD) signed by the Owner before the change is implemented.
- 27.2 A Change Order or Construction Change Directive is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fees, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of Work.

- 27.3 If none of the methods set forth in General Conditions Exhibit C is agreed upon, the Construction Manager, provided he receives a written Construction Change Directive signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Construction Change Directive is issued under these conditions, the Project Consultant will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of Work as outlined in Article 26 of the General Conditions. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- 27.4 The cost of the Change in work shall be computed in accordance with General Conditions Exhibit C.
- 27.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with General Conditions Exhibit C.
- 27.6 Claims For Additional Construction Costs or Time - All claims for additional costs or time shall be made by request for a change order submitted as provided in Article 27 of the General Conditions. Additional time shall be considered only if the approved CPM critical path is impacted by the change.
- .01 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Project Consultant or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such time as the Owner may reasonably determine.
 - .02 Only delays which are determined to extend the critical path for the schedule for constructing the project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.
- 27.7 Minor Changes In The Project - The Facilities Project Manager will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order.
- 27.8 Emergencies - In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 27 and Exhibit C of the General Conditions.

ARTICLE 28
DISCOUNTS AND PENALTIES

- 28.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the Cost of Work is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of Work. All penalties incurred due to fault of the Construction Manager for late payment of cost of the project will be paid by the Construction Manager.
- 28.2 Construction Manager shall comply with the Direct Owner Purchasing Program as set forth in SBBC Specification Section 01295, if applicable.

ARTICLE 29
BONDS

- 29.1 Bonds
- .01 In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the GMP as revised.
- .02 To be acceptable to the School Board of Broward County as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
- .03 The Surety Company shall be approved by the United States Treasury Department and have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida:
- .04 The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- .05 The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued
- .06 If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
- .1 The Surety Company shall have at the minimum an A- Policy Holder's Rating, and a Class VI Financial Rating in the latest issue of Best's Key Rating Guide.
- .2 The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
- .07 Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to

do business in this state have been met.

- .08 In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

ARTICLE 30 INDEMNITY AND DUTY TO DEFEND

- 30.1 To the fullest extent permitted by law, the Construction Manager shall indemnify, defend and hold harmless the Owner, and its members, officers, employees and agents ("Indemnitees") from and against all claims, causes of action (by whomever brought or alleged and regardless of the legal theories upon which the liability, claims or causes of action are based), liabilities, damages, losses, costs, expenses and fees, including, but not limited to, the reasonable fees of attorneys, expert witnesses and other consultants at the pre-trial, trial and appellate levels, which are or may be imposed upon, incurred by or asserted against Indemnitees that arise out of, are caused by, result from, or are incidental to Construction Manager's performance under this Agreement, or to the extent any claims, liability, causes of action, damages, losses, costs, expenses or fees are caused by negligence, recklessness, or intentional wrongful conduct of the Construction Manager or any sub-contractor or sub-sub-contractor, any supplier and any individual or entity directly or indirectly employed by any of them. Construction Manager shall insure each sub-contract contains this provision and the requirement for each sub-contractor to indemnify, defend and hold harmless the Indemnitees, and that flow-down clauses requiring this provision and requirement are utilized by all entities Construction Manager has a direct contract with. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise. This indemnification obligation shall not be diminished or limited in any way by any insurance maintained pursuant to the Agreement or otherwise available to the Construction Manager. The remedy provided to the Indemnitees by this indemnification shall survive this Agreement. A claim for indemnity pursuant to this provision shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning, or construction of an improvement to real property. The provisions of this Section are intended to require the Construction Manager to furnish the greatest amount of indemnification allowed under Florida law.
- 30.2 In any and all claims against the Owner by any employee of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, the obligations for Construction Manager to indemnify Owner under this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Manager under workman's compensation acts, disability acts, or other employee benefit acts.
- 30.3 In the event that any claims are brought or actions filed against the Owner with respect to the indemnity contained herein, the Construction Manager agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Construction Manager agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Construction Manager further agrees to pay, at the sole expense of the Construction Manager, the attorney's fees and cost incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. However, if the claims or actions are covered by insurance and such coverage is acknowledge by the insurance company in writing to the Owner, then, in that case, the insurance company shall choose counsel, direct the defense and be the judge of the acceptability of any compromise or settlement of any such claims or actions against the Owner which are within the insurance policy limits and are paid by the insurance company

solely. Otherwise, if the claims or actions are not covered by insurance, then, at its sole option the Owner shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions asserted against the Owner.

- 30.4 The Construction Manager agrees, at its own expense, and upon written request by the Owner, to defend any suit, action or demand brought against the Owner on any claim or demand that is alleged, whether rightfully or wrongfully, to arise out of or result from the negligence, recklessness or intentional wrongful conduct of the Construction Manager or any sub-contractor or sub-sub-contractor, any supplier and any individual or entity directly or indirectly employed by any of them
- 30.5 The Construction Manager recognizes the nature of the indemnification obligations imposed under this contract and voluntarily makes these covenants. The obligation imposed upon the Construction Manager under this Indemnification Agreement shall survive termination of this contract.

ARTICLE 31 CONSTRUCTION MANAGER'S INSURANCE

- 31.1 The Construction Manager shall not provide any services under this contract until the Construction Manager has obtained all insurances required hereunder and such insurances have been approved by the Owner. Owner may withhold payments due to Construction Manager in accordance with this Contract or terminate or suspend this contract with all costs or expenses associated with same to be paid by Construction Manager in the event Construction Manager fails to comply with any requirement in the Contract regarding insurance.
- 31.2 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars (\$200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars (\$200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F.S., as amended.
- 31.3 The Construction Manager shall furnish certificates of insurance to the Owner for review within ten (10) days after award and shall maintain the required insurance at all times during the term of this contract.
- 31.4 All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All insurance companies providing policies required under this contract shall have at least an "A-" rating and a financial rating not less than VI in the current A.M. Best Manual or hold a Moody's Investors Service Financial Strength of "Aa3" or better.
- 31.5 All certificates of insurance shall be in the form as approved by Insurance Standards Office (ISO), unless approved by Owner's Designated Risk Management Administrator and such certificates shall clearly indicate that the Construction Manager has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims. No material change or cancellation of the insurance shall be effective without a thirty (30) day prior written notice to and approval by the Owner's Designated Risk Management Administrator.
- 31.6 The Construction Manager shall verify that all subcontractors utilized in conjunction with all services provided under this contract shall maintain insurance of the type, amount, and classification required by these provisions.

- 31.7 Neither approval by the Owner, nor failure to disapprove the insurance provided by the Construction Manager shall relieve the Construction Manager of full responsibility to provide the insurance as required by this contract.
- 31.8 All insurance policies required under this contract shall be endorsed to be primary of all other valid and collectable coverages maintained by the Owner. The Owner shall be named as an additional insured under the General Liability policy.
- 31.9 The Owner reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the life of this contract.
- 31.10 Insurance Provider and Surety: In the event that any insurance provider, including but not limited to performance and payment bond surety companies, is downgraded from A-VI rating by AM Best or Aa3 rating by Moody's Investor Service, or has an order of liquidation entered against it in any jurisdiction, Construction Manager shall furnish a replacement insurance product, insurance policy or surety bond, that satisfies the requirements of this Agreement within fifteen (15) days of receipt of written notice from Owner or from the time Construction Manager becomes aware of the downgrade or order of liquidation whichever is sooner.
- 31.11 Construction Manager and Surety shall have a continuing obligation to insure that all insurance or surety requirements are satisfied throughout the construction of the project and until all post completion obligations; including punch list and warranty requirements are completed or expire.

INSURANCE REQUIRED:

- 31.12 **Commercial General Liability Insurance:** The Construction Manager shall maintain Comprehensive General Liability Insurance, including Products & Completed Operations, Personal and Bodily Injury, and Contractual Liability, to cover the indemnification language set forth herein. Limits shall not be less than \$1,000,000 per occurrence; \$1,000,000 general aggregate. General Aggregate shall apply Per Project. Products Completed Operations aggregate shall not be less than \$1,000,000. The Owner, its members, officers, employees and agents shall be named as an Additional Insured.
- 31.13 **Automobile Liability Insurance:** The Construction Manager shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in the amount of not less than One Million Dollars (\$1,000,000) per occurrence Combined Single Limit for Bodily Injury and Property Damage and shall not be any less restrictive than the standard ISO Business Auto Policy CA 00 01.

In the event the Awardee does not own any vehicles, we will accept hired and non-owned coverage for \$1,000,000 Combined Single Limits and we will require an affidavit signed by the Awardee indicating the following:

(Insured's Name) does not own any vehicles. In the event we acquire any vehicles throughout the term of this agreement, (Insured's Name) agrees to provide proof of "Any Auto" coverage effective date of acquisition.

- 31.14 **Workers' Compensation Insurance:** The Construction Manager shall maintain Workers' Compensation Insurance in accordance with Florida Statutory Limits and Employers Liability Insurance with a limit of not less than \$500,000/\$500,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

- 31.15 **Insurance Warranty Period:** All Insurance policies must remain in effect during performance of the work and for a period of one (1) year after Certificate of Completion, Certificate of Occupancy (OEF 110b), or Certificate of Final Inspection (OEF 209) which has been signed by the Chief Building Official /certified inspector.
- 31.16 **Certificate of Insurance Requirements:** Prior to the commencement of any work, as evidence of required coverage, Awardee must provide a Certificate of Insurance to The School Board of Broward County, Florida's Risk Management Department for approval. Certificates should be faxed to The School Board of Broward County, Florida, Risk Management Department Certificate Tracking System at 1-866-897-0425.
- 31.17 **Liability Policies** are to contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:
- .01 The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
 - .02 All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.
 - .03 Contractual liability is included in the General Liability policy.
 - .04 General Aggregate must apply Per Project and indicated on the certificate.
 - .05 Project Number/Location must be referenced in the Description of Operations.

OWNER PROVIDED BUILDER'S RISK INSURANCE PROGRAM

- 31.18 **OWNER TO MAINTAIN BUILDER'S RISK INSURANCE PROGRAM:** Except as otherwise provided, the Owner shall maintain a builder's risk insurance policy on behalf of the Construction Manager and its Subcontractors, in effect at the time that Notice to Proceed is received by Construction Manager.
- 31.19 **Owner Builder's Risk Insurance Program** for the Construction Manager and its Subcontractors will be limited to Covered Loss resulting from damage or destruction of property while such property is at the construction jobsite of the Project as described in this Contract.
- 31.20 **NO COVERAGE ON CONSTRUCTION MANAGER'S TOOLS OR EQUIPMENT:** The coverage under the Owner Builder's Risk Insurance Program will be limited to property which has been, or is intended to be, incorporated into the Work as part of the contract price for which title has either been passed to the Owner, or is intended to pass to the Owner.
- 31.21 **RESPONSIBILITY OF THE DEDUCTIBLE:** The Construction Manager shall be solely responsible for the first \$20,000 of Covered Loss in any one occurrence for any covered peril. If the deductible on the Owner Builder's Risk Insurance Program applicable to the Covered Loss exceeds the \$20,000 for which the Construction Manager is responsible, the Owner shall be responsible for that portion of Covered Loss incurred by the Construction Manager and its Subcontractors in excess of \$20,000 up to the amount of the deductible in the Owner's Builder's Risk Insurance Program.
- 31.22 **COMMENCEMENT OF THE OWNER BUILDER'S RISK INSURANCE PROGRAM:** The Owner Property Insurance Program shall commence with respect to the Work at the later of the date Notice to

Proceed is received by the Construction Manager under this contract or commencement of Work at the construction jobsite of the Project as described in the Contract.

- 31.23 **TERMINATION OF OWNER PROPERTY INSURANCE PROGRAM:** Coverage under the Owner Builder's Risk Insurance Program for the Construction Manager and its Subcontractors shall terminate at the earliest of:
- .01 With respect to any completed portion of the Work, if the Owner elects to occupy and/or use such completed portion of the Work prior to Substantial Completion, the date the Owner first occupies or uses such completed portion of the Work; or
 - .02 If work by the Construction Manager is permanently abandoned or terminated prior to Substantial Completion, at the time such work is permanently abandoned or terminated; or
 - .03 Termination of the Contract by the Owner.
- 31.24 **OWNER PROPERTY INSURANCE PROGRAM SUBJECT TO LIMITATIONS:** The rendering of the Owner Builder's Risk Insurance Program shall not constitute any representation by the Owner with respect to the adequacy of the insurance to protect the Construction Manager or its Subcontractors against property insurance type losses. The Owner emphasizes that coverages in the Owner Builder's Risk Insurance Program is limited in scope and do not necessarily include all insurance coverages, either desirable or normally maintained by the Construction Manager or Subcontractors. Except as otherwise specifically provided in the Contract, the providing of the Owner Builder's Risk Insurance Program shall not be construed to be a limitation on the nature or extent of the Construction Manager's or its Subcontractors' obligations under this Contract nor to relieve the Construction Manager or its Subcontractors of any such obligations.
- 31.25 **NOTICE OF CLAIM UNDER OWNER BUILDER'S INSURANCE PROGRAM:** In addition to, and not in lieu of, any other notice required under this Contract, if a Construction Manager or its Subcontractor suffers injury or damage to property which might result in Covered Loss under the Owner Builder's Risk Program, written notice of such injury or damage shall be given to the Division of Risk Management of the School Board of Broward County, as soon as practical, but not exceeding seven (7) day after first observance of such injury or damage. The notice shall provide sufficient detail to enable the Division of Risk Management or its designee, to provide an initial report to the Owner's insurers and to properly investigate the matter. Notification shall be directed to the SBBC Risk Management Division at (754) 321-1900.
- 31.26 **COOPERATION OF CONSTRUCTION MANAGER AND SUBCONTRACTORS:** The Construction Manager and all of its Subcontractors shall assist the Owner and the Owner's insurers and fully cooperate in respects to reporting, investigation and adjusting of claims under the Owner Builder's Risk Insurance Program whether or not involving the respective Construction Manager or Subcontractor.
- 31.27 **WAIVER OF SUBROGATION:** To the extent such insurance permits, and then only to the extent Owner collects under the Owner Builder's Risk Program, SBBC waives any and all claims against Construction Manager or Subcontractors and their respective agents, servants and employees, for loss or damage to Owner's property. To the extent such insurance permits and then only to the extent the Construction Manager collects under its property insurance coverage, Construction Manager waives any and all claims against Owner and its agents, servants and employees for loss or damage to Construction Manager's property. Construction Manager shall require all Subcontractors to waive, to the extent such insurance permits and then only to the extent such Subcontractor collects under its

property insurance coverage, any and all claims against SBBC and its agents, servants and employees for loss or damage to such Subcontractor's property.

- 31.28 **OWNER'S RIGHT TO TERMINATE, MODIFY OR REPLACE:** The Owner reserves the right to terminate whole or in part or modify the Owner Builder's Risk Insurance Program. In the event of termination or modification, whether initiated by the Owner's or its insurers, the Owner will assume the responsibility for that portion of any loss suffered by the Construction Manager or its Subcontractors which would have been covered by the Owner Builder's Risk Insurance Program.

ARTICLE 32 WAIVER OF SUBROGATION

- 32.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 31 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 32.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 33 WITHHOLDING PAYMENT TO CONSTRUCTION MANAGER

- 33.1 In addition to the Retainage, payments, including but not limited to Final Payment, may be withheld or reduced by the Owner in its sole discretion if any of the following exists:
- .01 The work is not proceeding in accordance with construction Documents Schedule as anticipated by the Owner. In that event, the Owner will assess the anticipated delay and the Owner will use the amounts specified for Liquidated Damages as the basis for amounts withheld. Said funds shall be held until such time as the Owner determines that the work is back on schedule. By making said funds available to Construction Manager, owner does not waive its right to assess liquidated damages at the completion of the Project;
 - .02 Liquidated Damages as set forth in this Contract;
 - .03 Unremedied Defective Work;
 - .04 Unremedied Punch-List items;

- .05 Subject to Owner's written notice to Construction Manager in accordance with Contract Documents, back charge items for work performed by Owner or another contractor at the request of Owner, for work within the scope of Work under this Construction Contract.
 - .06 Claims filed by subcontractors, laborers, suppliers, materialmen or others;
 - .07 Failure to comply with any and all insurance requirements;
 - .08 Failure of the Construction Manager to make payment properly to Subcontractors or others;
 - .09 Damage to the Owner or its property or another contractors' work caused by the Construction Manager or its subcontractors.
- 33.2 To the extent that any portion of Article 33 is inconsistent with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act, Section 218.70 shall govern.

ARTICLE 34

TERMINATION BY THE CONSTRUCTION MANAGER

- 34.1 If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon giving the Owner a written seven day notice to cure period, terminate the contract and request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminate expenses incurred by the Construction Manager.

ARTICLE 35

OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATIONS AND TERMINATION BY OWNER FOR CAUSE

- 35.1 If the Construction Manager fails to perform any of his obligations under this Agreement including any obligation he assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- 35.2 The Owner may terminate the contract with the Construction Manager for breach of any of the provisions of this Agreement. When such a breach exists the Owner shall notify the Construction Manager in writing of the breach, and if the Construction Manager does not within seven days of that written notice, cure, or satisfactorily commence cure, of the breach, the Owner may terminate this Agreement for cause.
- 35.3 If this Agreement is terminated by the Owner for cause, the Construction Manager shall not be entitled to receive any further payment until the all Work covered by this Agreement is completed and all costs

relating to this Work are known to the Owner. After all Work is complete and paid for, any payments still owed the Construction Manager shall be paid by Owner to Construction Manager. Any amount paid by the Owner in excess of any payments still owed to the Construction Manager shall be paid by the Construction Manager to the Owner.

- 35.4 If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

ARTICLE 36

TERMINATION BY OWNER WITHOUT CAUSE

- 36.1 The Owner may, upon ten (10) days' written notice to the Construction Manager, terminate this Agreement in whole or in part when it is in the interest of the Owner and at the sole discretion of the Owner. If the Owner terminates this Agreement for any reason other than pursuant to Article 35, he shall reimburse the Construction Manager for any unpaid Cost of Work due him under Article 26, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of Work at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitments.
- 36.2 After the establishment of the Guaranteed Maximum Price or at the completion of the Preconstruction Phase, if the final cost estimates or lack of funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement at its sole discretion and pay the Construction Manager his proportionate fee due in accordance with Article 25 plus any costs incurred pursuant to Articles 26.

ARTICLE 37

LAWS AND REGULATIONS

- 37.1 Construction Manager and its employees, representatives and subcontractors shall at all times in the performance of the work, comply with all applicable laws, ordinances, statutes, rules and regulations

(including but not limited to the Florida Building Code), in effect at the time this Agreement is signed.

- 37.2 If, during the term of this Construction Contract, there are any changed or new laws, ordinances or regulations not in existence at the time of signing this Construction Contract which become effective and which affect the cost or time of performance of the Construction Contract, Construction Manager shall within fifteen (15) days of the discovery of said law, ordinance or regulation, notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Construction Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the compensation and/or time of performance may be made at Owner's discretion.
- 37.3 If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, Construction Manager shall within fifteen (15) days of discovery of same report the same in writing to Owner and Project Consultant who will issue such instructions as may be necessary.

ARTICLE 38 DISPUTE RESOLUTION

- 38.1 The Owner and Construction Manager agree that, in the event of a dispute, the parties will attempt to resolve such dispute without litigation and that resolution through mediation procedures will be encouraged. Failing resolution, and prior to commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.
- 38.2 The existence of a dispute between the parties shall not be the basis of the Construction Manager unilaterally electing not to continue performance pursuant to the terms of the Contract Documents.

ARTICLE 39 GOVERNING LAW AND VENUE

- 39.1 The Construction Contract shall be governed by the laws of the State of Florida.
- 39.2 Venue of any action arising out of this Agreement shall exclusively be in Broward County, Florida or in the US District Court for the Southern District of Florida.

ARTICLE 40 RIGHTS AND REMEDIES

- 40.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 41 SUCCESSORS, ASSIGNS AND ASSIGNMENT

- 41.1 The Owner and the Construction Manager each binds itself, its partners, successors, assigns and legal

representatives to the other party in respect to all covenants, agreements and obligations contained in the Construction Contract. It is agreed that the Construction Manager shall not assign, transfer, convey or otherwise dispose of the contract or its right, title and interest in and to the same or any part thereof, without previous consent of the Owner and concurred to by the Sureties.

- 41.2 If requested by Owner the Construction Manager agrees to assign all Subcontracts required for performance of this Contract to the Owner upon the Owner or Facilities Project Manager's determination that Construction Manager has defaulted under the Contract Documents. The Construction Manager shall include in all Subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier, in the event of Construction Manager's default under this Contract, to consent to the assignment of their subcontracts to the Owner.

ARTICLE 42
NOTICE OF CLAIM: WAIVER OF REMEDIES;
NO DAMAGES FOR DELAY

- 42.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
- .01 All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - .02 The Construction Manager must submit a Notice of Claim to Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
 - .03 Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
 - .04 The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this Article.
- 42.2 After receipt of a Request for Change Order, the Owner, within a reasonable time, shall deliver to the Construction Manager its written determination of the claim.
- 42.4 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 25, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Project Consultant, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 42.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes as set forth in Articles 25 and 27. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

- 42.5 In the event it shall be determined by a Court of competent jurisdiction that the preceding provision is inapplicable or unenforceable for any reason or cause, then the Construction Manager shall be entitled to the sum of \$200 per day for each day it is actually delayed by the action of or neglect of the Owner or Project Consultant or by changes in the Work, or by any other cause of delay which is attributable to the Owner or Construction Manager and beyond the Construction Manager's control, avoidance or mitigation and without the fault or negligence of the Construction Manager and/or Subcontractor or supplier at any tier. This provision contemplates anticipated and actual loss caused by any delay and the difficulty in proving the loss. The sum set forth above, on a per diem basis, is the total amount recoverable from the Board as full and final compensation for all delay damages, consequential damages, loss of profits and/or the like. Article 42.5 compensation, if triggered as set forth in Article 42.5 of the General Conditions to the Construction Manager Agreement, are in addition to any monies due pursuant to Article 25 of the General Conditions.

ARTICLE 43 ROYALTIES AND PATENTS.

- 43.1 The Construction Manager shall pay all royalties and license fees.
- 43.2 The Construction Manager shall be responsible for all infringement of patent rights and shall assume the defense, including payment of attorney fees and costs, of any suit brought against Construction Manager and/or Owner for infringement of any United States patent or for wrongful use of proprietary information of any third party.
- 43.3 Construction Manager hereby indemnifies and shall defend and hold harmless Owner and its representatives, respectively, from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, and arising out of the use of the equipment or materials provided under this Construction Contract by Construction Manager, or out of the process of actions employed by, or on behalf of Construction Manager in connection with the performances of this Construction Contract. Construction Manager shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further, that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or its representatives.
- 43.4 Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, materials or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of the Contract Documents.
- 43.5 The indemnification pursuant to Florida Statute 725.06 and other Florida laws, etc., shall have a separate consideration of \$1.00, receipt of which is hereby acknowledged and incorporated into the project sum. This is incorporated by reference into the Bid Documentation and Specifications if any.

ARTICLE 44
RIGHT TO AUDIT PROVISIONS

- 44.1 Construction Manager's "records", as referred to in this contract, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Construction Manager records which may have a bearing on matters of interest to the Owner in connection with Construction Manager's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Construction Manager compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the Construction Manager or his payees. Construction Manager shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Construction Manager will cooperate fully and will require Related Parties and all of Construction Manager's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.
- 44.2 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Construction Manager's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.
- 44.3 Owner's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- 44.4 Construction Manager shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payees' costs from amounts payable to the Construction Manager pursuant to this contract.
- 44.5 If an audit inspection or examination in accordance with this Article, finds that the Construction

Manager overcharged Owner, the Construction Manager shall pay to Owner the Overcharged Amount, which is defined as the total aggregate overcharged amount, together with interest thereon, (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$25,000.00, Construction Manager shall pay to Owner the Overcharged Amount and the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit costs, incurred as a result of its audit of Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts; to Owner within seven (7) business days of its receipt of Owner's invoice or such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

ARTICLE 45 MISCELLANEOUS

- 45.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section, 218.74(4) Florida Statutes (1998) as amended.
- 45.2 Harmony - Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the project shall work in harmony with and be compatible with all other labor being used by Construction Manager now or hereafter on the site of the project. Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.
- 45.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 45.4 Invoices - Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.
- 45.5 Construction Manager's Project Records - The Construction Manager's Project Records shall be maintained as prescribed herein above in accordance with the State of Florida General Records Schedule for State Agencies A-I and shall be made available to the Owner or his authorized representative at mutually convenient times.
- 45.6 Public Entity Crime Information Statement - A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes,

for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

- 45.7 Electronic Mail Capabilities - The Construction Manager must have electronic mail capabilities through the World Wide Web. It is the intention of the School Board of Broward County to use electronic communication for all projects whenever possible. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 45.8 Trench Safety Act - The Construction Manager must comply with the provisions of the Trench Safety Act (Florida Statutes Section 553.66, as amended).
- 45.9 Strict Performance - The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.
- 45.10 Severability - If any clause or provision of this Agreement is illegal, invalid or otherwise unenforceable under present or future laws effective during the term hereof, then the remainder of the Agreement shall not be affected thereby; and in lieu of each clause or provision of this Agreement which is illegal, invalid or otherwise unenforceable, there shall be added, as part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or otherwise unenforceable clause or provision as may be possible and as may be legal, valid and enforceable.

**EXHIBIT A
CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES**

Owner

<u>Individual</u>	<u>Title</u>
	Superintendent of Schools
	Chief Facilities and Construction Officer

Owner's Representative

<u>Individual</u>	<u>Title</u>
	Project Manager

Project Consultant

<u>Individual</u>	<u>Title</u>
	Project Principal
	Project Manager
	Site Representative

Construction Manager

<u>Individual</u>	<u>Title</u>
	Project Principal
	Project Manager
	Site Superintendent

**EXHIBIT B
CONSTRUCTION MANAGER'S PERSONNEL**

PRECONSTRUCTION PHASE STAFF (included in Preconstruction Services Fee)

Individual	Title	% of Time assigned to project

CONSTRUCTION PHASE - OFF-SITE SUPPORT STAFF (included in Construction Management Fee unless approved in writing by Owner)

Individual	Title	% of Time assigned to project

CONSTRUCTION PHASE - ON-SITE SUPPORT STAFF (included in Construction Manager's lump sum General Conditions cost as part of GMP)

Individual	Title	% of Time assigned to project

EXHIBIT C
CHANGE ORDERS, EXTRA WORK AND CLAIMS

1. The contract language contained in this Article will supplement and take precedence over all other change order pricing contract provisions in file contract documents provided by either the Owner or the Construction Manager and/or Architect/Engineer. It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by the Construction Manager, Prime Contractors, Trade Contractors or Subcontractors (Subcontractor), and all other lower tier Contractors (Sub-Subcontractors) working on the Project. In the event of a conflict between the language in this Exhibit and the other contract documents used for the project, the change order pricing and contract provisions in this Exhibit shall govern.
2. The Construction Manager agrees that it will incorporate the provisions of this Exhibit into all agreements with lower tier Contractors, Subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts, and/or cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change order pricing, specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.
3. The term change order shall include Extra Work and Claims unless specifically excluded or further described.
4. Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Construction Manager in accordance with the pricing provisions found in this Exhibit. The options will be (1) lump sum change order proposal, (2) unit price change order proposal; or (3) cost plus change order proposal as defined in the following provisions:
 - a. **Lump Sum Change Order Proposals** - The Construction Manager will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format *satisfactory* to Owner. The Owner will require itemized change orders on all change order proposals from the Construction Manager, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).

Labor: Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Construction Manager for those workers or crews of workers who the Construction Manager reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentages as outlined in paragraph 6 of this Article.

Labor Burden - Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not

union employees), and net actual cost to employers for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Construction Manager shall reduce its standard payroll tax percentages to reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

Material: Estimated material change order costs shall reflect the Construction Managers reasonably anticipated net actual cost for the *purchase* of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Construction Manager due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for change order work shall be credited to Owner if the Construction Managers provided Owner funds in time for Construction Manager to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

Equipment: Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$1000). For Construction Manager or subcontractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Construction Manager or subcontractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

- b. Unit Price Change Order Proposals - As an alternative to Lump Sum Change Order Proposals, the Owner or the Construction Manager acting with the approval of the Owner may choose the option to use Contract Unit Prices. The Construction Manager will submit within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.

- c. Cost Plus Change Order Proposals - As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including the cost or rental of small tools, minor equipment, or plant (fabrication), plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as above. Owner and Construction Manager may agree in advance in writing

on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Construction Manager's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Construction Manager and / or contractors for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Construction Manager's employees showing both base contract work as well as extra work performed by each employee.

5. Maximum Markup Percentage Allowable on Self-Performed Work: With respect to pricing change orders to any Lump Sum Contract change order, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be limited to the percentage, shown on Exhibit B of the CMAR Agreement (and as outlined in General Conditions Exhibit D), of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.
6. Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors: With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Construction Manager supervising the lower tier contractor's work shall be not-to-exceed 10%.
7. Sales and use tax (if applicable) shall not be subject to any Markup Percentage Fee. Any sales or use tax properly payable by the Construction Managers shall be added, after computing the change order amount before tax.
8. As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Construction Manager's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordination; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; comprehensive general liability insurance; auto insurance and umbrella insurance; pick-up truck costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual value of \$1,000 or less.
9. The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, after the net credit is computed by applying the sliding scale percentages as outlined, an adjustment will be made to the computed credit by multiplying the credit amount by a factor of .975 to arrive at a final credit amount to be issued to the owner. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.
10. In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to accomplish the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
11. The Construction Manager's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are

not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Construction Manager to proceed with the changes without waiting for the Construction Manager's proposal or for the formal change order to be issued. In the case of an unacceptable Construction Manager proposal, the Owner may direct the Construction Manager to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Construction Manager by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

12. In the event the Construction Manager has been required to furnish performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Construction Manager's net increase or decrease in bond premium costs associated with change orders to Construction Manager's base contract price. Contract adjustments related to any such increased or decreased costs of related to insurance and/or bond coverage will not be subject to any Construction Manager markup for overhead and profit.
13. **Accurate Change Order Pricing Information:** Construction Manager agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Construction Manager further agrees to submit change order proposals with cost and pricing data, which is accurate, complete, current and in accordance with the terms of the contract with respect to pricing of change orders.
14. **Right to Verify Change Order Pricing Information:** Construction Manager agrees that any designated Owner's representative will have the right to examine the Construction Manager's records to verify the accuracy and appropriateness of the pricing data used to price change proposals. Even after a Change Order Proposal has been approved, Construction Manager agrees that if the Owner later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the contract regarding pricing of change orders; then an appropriate contract price reduction will be made.
15. **Requirements for Detailed Change Order Pricing Information:** Construction Manager agrees to provide and require all subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Article. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Construction Manager's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.
16. The Construction Manager is required to notify the owner within seven (7) calendar days subsequent to an event that may lead to a claim by the Construction Manager or Subcontractor of any tier. The claim is to be perfected and the Owner provided a full accounting for all costs associated with the claim within thirty (30) calendar days, unless the Construction Manager requests in writing and the Owner agrees to a specific extension of this time. The reason for the extension is to be made known to the Owner in the written request. Any claims that are not promptly and accurately reported in keeping with this article

will not be entertained. The Owner has the right to verify amounts claimed in the same manner as described in paragraphs 14 and 15 of this Exhibit.

17. The Construction Manager shall not be paid overhead and profit on any additional cost item of work, not included in GMP, for which the Construction Manager should have reasonably discovered in their review of Contract documents (see also Agreement Section 3.3.2).

**EXHIBIT D
INDUSTRY BENCHMARKS**

Description	Rate	Base
Design Fee	6%-7%	GMP
Preconstruction Fee	0.5%-1%	GMP
General Conditions	7%-8%	GMP (exlcude CM Fee)
OH & P Fee (CM Fee)	2%-5%	Cost of Work
GL Insurance A	0.45%	Revenue
Subcontract Bonds B	1%-1.3%	GMP
P&P Bond CM	1%	GMP/CM Revenue
Labor Burden C	30%-40%	Labor

A CCIP ranges from 3 to 4% of subcontract revenue

B Including discount would result in 0.75%

C Burden includes: FICA, FUTA, SUTA, MED/DENT, STD, LTD, W/C and Compensated Absences.