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Joris Jabouin, Chief Auditor  
Broward County Public Schools  
600 SE 3<sup>rd</sup> Avenue, 8<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

Pursuant to the request made by District Staff, and our Construction, Operational & IT Auditing Services Agreement dated September 4, 2019, RSM is pleased to present the results of our review of the District's Agreement for Continuing Contract Services for Construction Management at Risk Services.

In summary, the District should consider the following key recommendations as it embarks upon refinement of this Agreement:

- The article defining the withholding of retainage should be modified to directly reflect recent changes in Florida Statute related to public construction retainage.
- The Liquidated Damages for Final Completion section of the Agreement currently allows the Construction Manager sixty (60) days to achieve Final Completion after the date of Substantial Completion. The District may consider reducing the number of days to thirty (30) to align with the standard Notice to Proceed ("NTP") currently utilized by the District.
- Other minor references and formatting issues were noted. Refer to items #3-5 below for additional information.

The District has provided a response, including additional context/background related to the item and/or indicating that a modification to the Agreement was made as recommended.

We are happy to discuss any of the comments herein, and appreciate the opportunity to help the District as you move forward with the use of the Agreement.

Respectfully Submitted,

*RSM US LLP*

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## CC-CMAR AGREEMENT REVIEW

### 1. Payments to the Construction Manager, Article 8.4

During our review, we noted the following contract language does not directly reflect recent changes in Florida Statute related to public construction retainage:

*"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."*

While Article 8.4 of the Agreement was updated to include the correct not-to-exceed retainage rate of five percent (5%), the updated statute does not require the reduction of retainage at fifty percent (50%) completion. Further, we noted that Article 8.4 references Section 255.078 (5), which is now Section 255.078 (2) in the 2021 Florida Statutes. We recommend the District consider removing the language noted above and update the article to incorporate the correct reference to Section 255.078 (2) of the 2021 Florida Statutes.

#### District Response

This item was updated.

### 2. Liquidated Damages for Final Completion, Article 5.2.1

During our review of the Agreement, we noted the Construction Manager is subject to liquidated damages for failure to achieve Final Completion within sixty (60) days of the date of Substantial Completion. The District's Notice-to-Proceed ("NTP") document typically requires that Final Completion be achieved no more than thirty (30) consecutive calendar days after Substantial Completion.


If the District's intent is to seek liquidated damages for noncompliance with the terms set forth in the NTP, we recommend the District modify Article 5.2.1 to reduce the period between Substantial and Final Completion from sixty (60) to thirty (30) days.

#### District Response

Days for Final Completion will be addressed on a per project basis. As a point of clarification, based on the requirements to obtain final completion, thirty (30) days is no longer the standard utilized in projects. Rather sixty (60) days has been used. The actual days it has taken between substantial and final completion are running an average of 153 days. The following items must take place before final and each takes significant time:

- i. Punch Lists (the actual work) happens after substantial take time
- ii. All Financial Adjustments of the account must be reconciled
- iii. Change Orders must be negotiated and approved by the Board
- iv. Architect issues the 209
- v. Building Department Inspects and signs off on the 209
- vi. Board Item gets submitted - School Board approves final payment/reduction of retainage etc. for closeout
- vii. Superintendent has to sign off on the 209

CC-CMAR AGREEMENT REVIEW	
<b>3. Task Orders, Page 3</b>	
During our review, we noted the Task Orders provision in the Form of Agreement (page 3 of 114) references “Attachment F” for the District’s Authorization to Proceed (“ATP”). Upon review of the ATP template included therein, the District used the term “Exhibit” rather than “Attachment”. We recommend updating the reference to “Exhibit F” as shown on page 96.	
<b>District Response</b>	
This item was updated.	
<b>4. Guaranteed Maximum Price for Construction, Article 6.1.1</b>	
During our review, we noted Article 6.1.1 of the Agreement includes an incorrect reference to General Conditions Article 1, Paragraph 1.1.12 for School Board approval for the use of contingency. We recommend updating the reference to General Conditions Article 1.12.	
<b>District Response</b>	
This item was updated.	
<b>5. Construction Manager’s Fees, General Conditions of the Contract, Article 25.2.02</b>	
During our review, we noted Article 25.2.02 of the General Conditions of the Contract includes an incorrect reference to Article 27 for the Construction Manager’s personnel to be assigned during the construction phase. We recommend updating the reference to General Conditions Exhibit B, Construction Manager’s Personnel.	
<b>District Response</b>	
This item was updated.	



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