

DOCUMENT 00520

**FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT made and entered into this ___ day of _____ in the year two thousand and eleven by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "Owner") and

CONTRACTOR NAME

Address

FEIN#(Hereinafter referred to as "**Contractor**".)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner will from time to time during the term of this Agreement require services, which may include labor, materials, and/or services from the Contractor on various different projects. Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement. The terms and conditions of this Agreement shall govern each of the individual projects for which the Contractor is hired.

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1 -DEFINITIONS

1.01 **Definitions:**

1.02 **The Deputy Superintendent, Facilities and Construction Management** - 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 Deputy Superintendent.

1.03 **Owner** - The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, , which is the approving body of 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 Contractors.

1.04 **Owner's Representatives** - The Deputy Superintendent of Facilities, Construction Managers

or his designee.

- 1.05 **Contractors** - Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.
- 1.06 **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 pursuant to the terms of this contract or Agreement.
- 1.07 **Project Manager** - An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Deputy Superintendent for Facilities and Construction , and Construction Director to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities.. They could be Project Manager I, II, III, or a combination of PM's based on the complexity and size of the Project.
- 1.08 **Project** - The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the project identified in the project manual and or as contemplated by the Owner under an approved scope of work.
- 1.09 **Phase** - A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, Professional Services Work with its own completion schedule. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors or Professional Consultant.
- 1.10 **Punch List** - A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/or inconsistent with the Contract Documents or Professional Services.
- 1.11 **Subcontractor/Sub-Consultant** - A person or entity other than a material man or laborer who enters into a Contract with a Contractor and or Consultant for the performance of any part of Construction and or Design or Services required by the Owner, or its representative. The term "Subcontractor or Sub-Consultant" is referred to throughout the Construction Contract Documents and or Service Agreement as if singular in number and means a Subcontractor or Sub-Consultant as an authorized representative of the Subcontractor or Consultant. The term "Subcontractor and or Sub-Consultant" does not include a separate contract or subcontract with the Owner.
- 1.12 **Fixed Limit of Construction (FLCC)** - Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value of the Contractors and or Professional Services Consultant fee's, contingency, and cost of the work to include other consultants Fees.
- 1.13 **Guaranteed Maximum Price (GMP)**- The GMP is the maximum amount of money that the Owner shall pay the Contractor or Consultant for all the work described in the contract documents and the consultants fee.
- 1.14 **Submittals** - Are prepared by the Contractor 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 Contractors 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.

- 1.15 **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 the Contractor 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 may not be the sole factor in determining whether substantial completion has been achieved.
- 1.16 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Owner or Contractor to furnish professional services to the project.
- 1.17 **Superintendent or Contractor and/or Contractor's Project Manager** - The executive representative for the Contractor 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 management of the work efficiently as designated, per current and applicable contracts.
- 1.18 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through the School Board of Broward County.
- 1.19 **Surety** - The firm, corporation, or individual which is bound by the Construction and Performance Bond with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.20 **Building Code Inspector: Employees of The School Board of Broward County, Florida,** and others designated by the Chief Building Official (CBO) who are certified by the State of Florida. Any references to "UBCI" within any documents shall mean BCI. The BCI are certified pursuant to Chapters 468, 471 and 481 of the Florida Statutes. A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Broward School Project Manager, Project Consultant and Contractors under contract with the Owner.
- 1.21 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contract and or Consultant by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the its obligations. The Work may constitute the whole or a part of the Project or Services.
- 1.22 **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 a written notice.

- 1.23 **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 Contractor or Consultant. A change order shall increase or decrease the Contract Cost.
- 1.24 **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 Contractor, and or Consultants with authority to proceed with the change needs to be expedited. The Contractor and/or Consultant are not required to agree on the terms offered by the Owner for the change at the Owner’s sole discretion (Unilateral Directive).
- 1.25 **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 Professional Services to be utilized for unforeseen circumstances and will need to be approved by the owner per the agreement.
- 1.26 **Supplemental Services** –Those services referred to in 2.01 below under Consulting Services.
- 1.27 **Authorization to Proceed** – A document in the form found in Attachment # 4, issued by the Owner’s representative to the Project consultant and /or Contractor, authorizing all or a portion of the work of specific professional services to proceed per contract documents and or agreement.
- 1.28 **Senior Project Manager** (Design / or Construction) – An employee of the SBBC referred to hereinafter as the “SENIOR PM” and who is the direct Supervisor of all the Project Managers (PM I, II, & III) and is responsible that all projects are completed within time and budget per signed Contract Documents.

ARTICLE 2 CONTRACTOR'S RESPONSIBILITIES

2.01 Representations:

2.0 1.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with any and all applicable codes as amended, laws and ordinances.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, 1999 ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code effective on July I, 2001; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

- 2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.
- 2.01.04 The Contractor must comply with SBBC and M/WBE goals as set forth by the Owner in the Bid Construction Services Minor Projects.

ARTICLE 3 -THE OWNER'S RESPONSIBILITIES

- 3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.
- 3.03 3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.
- 3.04 **Project Management:**
- 3.03.01 The Deputy Superintendent or his designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.
- 3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner.

ARTICLE 4 -BASIS OF COMPENSATION

- 4.01 The Single Fixed Multiplier, as agreed upon, is _____. Per the approved multipliers found in Document 00410 "Bid Form" "TABLE A" found in this agreement.
- 4.01.01 The Contract amount for each project as set forth in the table found in Document 00410-"**BID FORM**" the Purchase Order shall be: THE TOTAL OF EACH UNIT PRICE INCLUDED ON THE PROJECT COST SHEET, TIMES THE QUANTITY REQUIRED, TIMES THE SINGLE FIXED MULTIPLIER. The Single Fixed Multiplier includes all Labor, materials, services, profit,

overhead (including all necessary travel and per diem), insurance, and any other expenses associated with completing the work.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for survey data, testing services, fees, performance and payment bonds, builder's risk insurance, SBBC I.D. badges and permit as may be necessitated by request for submittals from the Contract Administrator. This reimbursement shall be based on an actual cost. **(Reimbursements are not subject to multiplier.)**

4.03 Estimates:

4.03.01 Estimates shall include all items as listed on the Price Schedule. Deletion or changes to the unit prices or items of work shown on the Price Schedule will be cause for rejection of the estimate. With unlisted items, the Contract Administrator and Contractor have the authority, after review of submittals (actual invoice, subcontractor's estimate, supplier estimate, cut sheet, shop drawings, etc.), to change the price schedule accordingly.

4.04 The Price Schedule will be composed of the following:

4.04.01 Cost estimates shall be based on the current RS Means Facilities Construction Cost Data, (or other referenced cost data as noted on Document 00410, Bid Form) in effect at the date of the Purchase Order as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida (Zip 333) and/or Table A as described in 4.04.03.

4.04.02 If a labor rate needs to be established for a task not found in the price schedule, use the labor rates published in the current RS Means Facilities Construction Cost Data [Crew Tables] set forth in above.

4.04.03 If certain tasks in the RS Means Facilities Construction Cost Data have been modified or a specific task is not listed in the RS Means Facilities Construction Cost Data Edition, the Contractor is instructed to contact the assigned Contract Administrator for clarification.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the unit price cost will govern.

ARTICLE 5 -ESTIMATING ORDER

5.01 Each Estimating Order and the attachments will describe the extent of work to be removed and the extent and type of new work to be installed. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractors submittal of a cost sheet(s) and all other documents mandated by the Estimating Order. The cost sheet(s) and other documents will be reviewed by the Contract

Administrator and, if found to be acceptable by the Contract Administrator, the Notice to Proceed will be signed by the Contract Administrator and the Contractor.

- 5.03 If, after initial review of the cost sheet(s) and any other documents submitted by the Contractor to the Contract Administrator, the Notice to Proceed cannot be signed, an extended review period will be initiated.

ARTICLE 6 -PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to be Ready Document 00545. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (10) calendar days from the start date stated on the Notice to be Ready, Document 00545 unless previously agreed to in writing by the Contractor and Contract Administrator. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, will be reported to the Contract Administrator or his designated representative immediately.

6.03 Items for work required by any Cost Sheet that are covered by the Price Schedule will be composed of the following pages from:

6.03.01 R.S. Means Facilities Construction Cost Data and Table A, which is a portion of the unit price schedule as altered by substitutions.

ARTICLE 7-PAYMENTSTO THE CONTRACTOR

7.01 Payment shall be made according to Document 01290 – Payment Procedures incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, forms and documents required by Owner have been provided by Contractor and its Sub-Contractor to Owner or others who are to receive same. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project.

7.01.02 The Contractor shall submit a certificate for payment in the Owner's required format as incorporated herein.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable thirty (30) days from receipt of the Contractor's invoice, provided it is in accord with the requirements of this Agreement.

7.01.05 Every request for payment (whether partial or final in excess of \$500.00) must be accompanied by a "Contractor's Affidavit and Certificate of Completion. The Contractor will receive a blank

Partial and Completion Certificate with the Initial Notice to Proceed. Additional copies of the certificate may be obtained from the Division of Facilities and Construction Management

ARTICLE 8 -INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700-Article 38

ARTICLE 9-INSURANCE

9.01 General Insurance Requirements:

9.01.01 The Contractor shall not provide any services under this contract until the Contractor has obtained all insurances required hereunder and such insurances have been approved by the Owner. Owner may withhold payments due to Contractor in accordance with this Contract or terminate or suspend this contract with all costs or expenses associated with same to be paid by Contractor in the event Contractor fails to comply with any requirement in the Contract regarding insurance.

9.01.02 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. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

9.01.03 The Contractor shall furnish certificates of insurance to the Owner for review within ten (10) days after award and shall maintain the same insurance at all times during the term of this contract.

9.01.04 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. The certificate must contain a provision for written notification to the Owner in accordance with the policy provisions as outlined in the current ISO Accord (2009/09) form; or should older ISO versions be available, provide a minimum of 30-days notice of material changes or cancellation to the Owner.

9.01.05 All insurance policies required under this contract shall be endorsed to be primary of all other valid and collectable coverage's maintained by the Owner. The Owner shall be named as an additional insured under the General Liability policy.

9.01.06 The certificates shall be in the form as approved by Insurance Standards Office [ISO], unless approved by owner and such certificates shall clearly indicate that the Contractor 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.

9.01.07 The Contractor 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.

9.01.08 Neither approval by the Owner, nor failure to disapprove the insurance provided by the Contractor shall relieve the Contractor full responsibility to provide the insurance as required by this contract.

9.02 Insurance Required:

9.02.01 Commercial General Liability Insurance: The Contractor 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, with limits of not less than \$2,000,000 per occurrence. The Owner, its members, officers, employees and agents shall be named as an Additional Insured

9.02.02 Owners and Contractors Protective Liability Insurance: The Contractor shall maintain Owners and Contractors Protective Liability Insurance with limits of not less than \$1,000,000 per occurrence.

9.02.03 Automobile Liability Insurance: The Contractor 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 standards 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 in the amounts listed above. In addition, we will require an affidavit signed by the Awardee indicating the following:
_____ (Awardee Name) does not own any vehicles. In the event we acquire any vehicles throughout the term of this agreement, _____ (Awardee Name) agrees to provide proof of "Any Auto" coverage effective date of acquisition.

9.02.04 Workers' Compensation Insurance: The Contractor shall maintain Workers Compensation Insurance in accordance with Florida Statutory Limits and Employers Liability Insurance with a limit of not less than Five Hundred Thousand (\$500,000) Dollars per occurrence.

9.02.05 Builders' Risk Insurance: The Contractor shall carry at an additional expense to Owner, on a per-project basis as determined by the Owner, Builders' Risk Insurance for the perils of fire, vandalism, malicious mischief, windstorm, and those included in extended coverage, such as windstorm / Hurricane, theft and building collapse. Insured in the amount of one hundred percent (100%) of the contract value to include both hard and soft costs. Such policies shall be written to protect the Contractor and Owner as their interest may appear.

ARTICLE 10 -GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's and Sub-Contractor's own staff, unless otherwise approved by the Owner. Said

approval shall not be construed as constituting an agreement between the Owner and said other person or firm.

10.02 Term of Agreement:

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between the School Board of Broward County and the Contractor, upon final School Board approval, be extended for one additional one-year period. The Board, through its Facilities and Construction Management Division, will, if considering to renew, request a letter of intent to renew from each Contractor, prior to the end of the current contract period. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any renewal.

10.02.02 No single project's construction value shall exceed \$1,000,000. Additionally, the Agreement shall also expire when the total value of work awarded reaches the contract limits of (see table in 4.01), or the contract renewal limits of (see table in 4.01) unless Agreement is amended to increase contract limit.

10.03 Time for Performance:

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Deputy Superintendent or his designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Recap Cost Sheet. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 Time Extensions:

10.04.01A reasonable extension of time for completion of various aspects may be granted by the Owner should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no damage for delay provisions.

10.05 Termination of Agreement:

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written

notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Division of the Facilities and Construction Management that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provide the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 Termination for Convenience:

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Cost of the Project due him. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor 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 Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 Contractor's Accounting Records and Right to Audit Provisions:

10.07.01 Contractor's records which shall include, but not be limited to, accounting records, payroll time sheets, audited and unaudited financial statements to substantiate overhead rates, written policies and procedures, Sub-Contractor files (including proposals of successful and unsuccessful Sub-Contractors) original estimates, estimating worksheets, computer records, disks and software, videos, photography, correspondence, change order files (including documentation covering negotiated settlements) and any other supporting evidence necessary to substantiate charges related to this Agreement (all of the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any price/ cost proposals, invoices, payments or claims submitted by the Contractor or any of his payees pursuant to the execution of this Agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations), fees, reimbursable services, etc. as they may apply to costs, matters or items associated with this Agreement. If requested to do so, Contractor shall provide copies of documentation described herein to the Owner.

10.07.02 For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the work, and until five (5) years after the date of final payment by Owner to Contractor pursuant to this Agreement. All costs which the Contractor is unable to provide support or documentation to substantiate that it was incurred as represented by the original estimated breakdown of cost or found not to be in compliance with provisions of this contract, shall be reimbursed to the Owner.

10.07.03 Owner's agent or its authorized representative shall have access to the Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article. Owner's agent or its authorized representative shall give auditees reasonable advance notice of intended audits.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, 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 costs from amounts payable to the Contractor pursuant to this Agreement.

10.07.05 If an audit inspection or examination in accordance with this Article, discloses overcharges (except negotiated fees) by the Contractor to the Owner in excess of 2% percent of the total contract billings, the actual cost of the Owner's audit shall be paid by the Contractor. If the audit discloses contract billing or charges to which Contractor is not actually entitled Contractor shall pay over to Owner said sum within 20 days of receipt of a written demand unless otherwise agreed to by both parties in writing.

10.08 Contract Documents:

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Contract Administrator. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.10 Attachments and References:

10.10.01 This Construction Services Minor Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, Bid No. 2011 – 01 - FC dated (February 1, 2011) and the contractor's bid submittals. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 Extent of Agreement:

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 Strict Performance:

10.12.01 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 provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11- PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 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, Contractor, 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.

ARTICLE 12 -NOTICES

12.01 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:	The School Board of Broward County, Florida	Sawgrass Technology Park 1643 North Harrison Parkway, Bldg H Sunrise, FL 33323 Attn: Thomas E. Lindner Acting Deputy Superintendent
With Copy To:	The School Board of Broward County, Florida	Sawgrass Technology Park 1643 North Harrison Parkway, Bldg H Sunrise, FL 33323 Attn: Denis Herrmann, Director Design & Construction Contracts
Contractor:		
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project	

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

ARTICLE 13 -AUTHORITY PROVISION

13.01 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 14 - NON-DISCRIMINATION PROVISION

14.01 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 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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. In witness thereof, the said Contractor and the Owner, The School Board of Broward County, Florida have caused this contract 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.

(Note to Contractors: a separate Power of Attorney is required for each bond & For the Contract Agreement (Doc 00520))

OWNER

CONTRACTOR

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

SEAL

SEAL

By: _____
Benjamin J. Williams
Chair

By: _____

By: _____
James F. Notter
Superintendent of Schools

By: _____

Approved By:

School Board Attorney

**STATE OF FLORIDA
COUNTY OF BROWARD**

BEFORE ME this _____ day of _____, _____, appeared

_____ personally known to me to be the person(s) described

in and who executed the foregoing contract 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 official this _____ day of

_____, 2011.

Notary Public State of Florida

My Commission Expires:

END OF DOCUMENT 00520