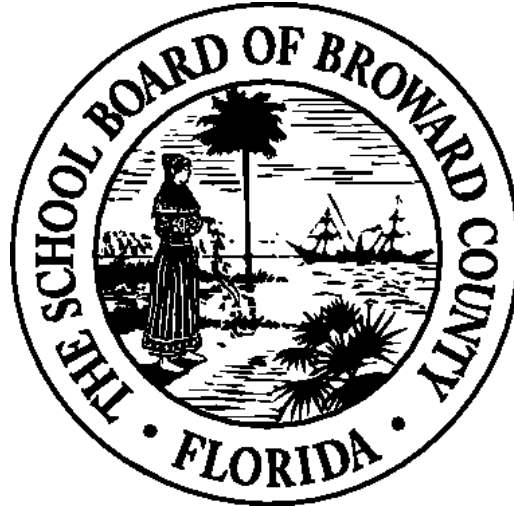


# THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA



## AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

PROJECT NO: ((ProjNumber))

PROJECT NAME AND LOCATION: ((ProjName))  
((ProjLocation))  
((ProjCityState))

CONSTRUCTION MANAGER: ((ContrName))  
((StateCorp))  
((ContrStreet))  
((CityStateZip))  
((ContrPhone))  
((ContrFax))

[\(Contr. Email\)](#)

PROJECT CONSULTANT: ((PCName))  
((PCStreet))  
((PCCityStateZip))  
((PCPhone))  
((PCFax))

[\(PC E-mail\)](#)

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**")

Fixed Limits of Construction Cost (FLCC): \$ \_\_\_\_\_ .00

**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:

**ARTICLE I**  
**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 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 Facilities 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 This Construction Management At Risk Contract, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Request for Qualifications, Documents contained in the Project Manual (including but not limited to Division 0 and 1) , a listing of which is attached to the GMP Addendum, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract embodies the entire agreement between Owner and Construction Manager and supercedes 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 contract shall be valid unless reduced to a written instrument and signed by both parties.

**ARTICLE 2**

Construction Manager Agreement  
July 6, 2004 (r1 5-26-05) Revised  
September 28, 2005, March 8, 2006 MA,  
April 11, 2006 MA, October 16, 2006 MA,  
February 16, 2007 MA, April 27, 2007 MA

## **THE WORK**

- 2.1 The Construction Manager shall perform all of the Work required by the Contract Documents 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 it's obligations under this Construction Contract;
  - .2 It is experienced and skilled in the construction of the type of project described in the Contract Document;
  - .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) and Florida Fire Prevention Code, 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

**PRE-DESIGN 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 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 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 D to 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**

- .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 Document 01310.
- .2 The Construction Manager will periodically review to the best of their abilities all Contract documents for constructability and compliance with applicable laws, rules, codes, design standards, and ordinances. 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 (Refer to exhibits G and H).
- .3 The Construction Manager will be required to work with and coordinate their activities with any additional consultants, or testing labs and others that Owner provides for the project and report all findings as specified in Document 01310.
- .4 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 incorporated into the construction documents by the Project Consultant unless otherwise authorized by the Owner in writing.
- .5 The Construction Manager will review construction documents and the new and existing buildings conditions and/or building site to reduce to the best of their abilities conflicts, errors and omissions and shall coordinate with the Project Consultant in order to eliminate change orders due to errors, omissions and unforeseen conditions.
- .6 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.
- .7 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 FLCC.
- .8 **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 SHALL WARRANT, WITHOUT**

**ASSUMING THE PROJECT CONSULTANT'S RESPONSIBILITIES, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.**

- .9 **DISCLAIMER OF WARRANTY: THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE OR WITHOUT DEFECT.**
- .10 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.
- .11 Guaranteed Maximum Price (GMP): Upon completion of the design phase [construction documents 100% complete] and prior to the bidding and award phase, the Construction Manager shall present to the Owner the GMP for the Owners review and approval in accordance with Article 6 of this Agreement.

### 3.4 **BIDDING AND AWARD PHASE**

- .1 At this stage the Construction Manager assumes the leadership responsibility for the project team. 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 26.03.08 in the General Conditions of this CM Agreement.
- .2 The Construction Manager shall review the Owners 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 Solicitation of Bids:
  - .1 The Construction Manager shall enter into Contracts with the firm who submits the lowest, responsive and responsible bid. The Construction Manager shall advertise according to SBBC policies as amended from time to time for bids on Document 00101 at least three (3) times, seven (7) days apart, and with the third (3<sup>rd</sup>) advertisement prior to a pre-bid conference if applicable and at least seven (7) days prior to the bid opening. Written proposals based on drawings and/or specifications shall be submitted to the Construction Manager. The written proposals shall all be opened at the usual location for bid openings. A tabulation of the results shall be furnished by Construction Manager to the Owner.
- .6 The Construction Manager and Owner, shall open at the Construction Manager 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.

3.5 **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 of this contract. In the event of a conflict between this Agreement and such documents the agreement shall control.
- .2 The Construction Manager shall provide the following minimum staffing level as set forth in Exhibit C-F 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 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.

### 3.6 **WARRANTY 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 (6<sup>th</sup>) and eleventh (11<sup>th</sup>) months after occupancy. Construction Manager shall deliver 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.

## **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**

5.1.01 The Construction Manager shall pay the Owner the sum of:

5.1.02 \_\_\_\_\_ 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.

5.1.03 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.

5.1.04 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.

5.1.05 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:**

5.2.01 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.

5.2.02 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.

5.2.03 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, if any, 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 lien;

- .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, see Exhibit J to the Agreement. Work shall not commence prior to the issuance of a Building Permit by the Chief Building Official. This indicates that all mandatories have been met (defined as Building Department code requirements.) Further, the agreed upon comments are required to be incorporated into the drawings at this stage. When 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 fees 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/OR 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 Deputy Superintendent, Facilities and Construction Management, Project Manager, Project Consultant, and Executive Director, Project Management, 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. If bids are received below the applicable line item of the GMP, the surplus shall be added to the contingency. All CUD's arising from the same cause and conditions shall be combined into one (1) CUD whenever possible.
- .2 When 100% of the Trade Contracts have been executed, the contingency within the GMP shall be decreased in proportion to the percent of the Work completed each month. In other words, if 10% of the Work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order and will be moved to the Owners savings line item in the schedule of values. The Owner may

utilize funds from the Owner saving line item in the Schedule of Values to fund added scope change orders.

- .3 If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency, however such event shall not be cause to increase the GMP. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner.
- .4 If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the Work as acknowledged by the Owner or negotiate for its performance for the specified line item lump sum amount in the preliminary schedule of values referenced in the GMP or less. All uses of the authorized contingency shall be authorized by Contingency Use Directive approved by the Owner before the contingency use is implemented.

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 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 below:

Pre-design	\$ _____
Design	\$ _____
Bidding and Award	\$ _____
Construction Phase	\$ _____

Warranty	\$ _____
Overhead	\$ _____
Profit	\$ _____
General Conditions	\$ _____ **

\*\* General Conditions include items of Labor, Materials and Services set forth in General Conditions Article 26.2 Subsections. 04, .06 (Except Builder's Risk Insurance), .09, .10, .13, .15, .16 and .18.

Total Fee	\$ _____
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Overhead, profit and bond allowance for Change Orders \_\_\_\_\_%

7.1.01 Pre-Design and Design Phase - In the case where pre-design and design fee 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 pre-design and design fee 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 pre-design and design phase.

- 7.1.02 Construction Phase Fee - The Construction Manager may request payment proportional to that of the contract price allocable to labor, materials and equipment for the project only after receiving a written Notice to Proceed (NTP) from the Owner.
- 7.1.03 Overhead and Profit For Construction Phase - Except as may be expressly included in Article 26 of the General Conditions, the Construction Manager shall receive, in addition to Article 7.1.01 and 7.1.02, overhead and profit and general expenses. The overhead and profit and general expenses shall be paid proportionally to the ratio of the cost of the Work in place. The overhead and profit and general expenses shall be approved in writing by the Owner as part of the GMP Addendum. Overhead and Profit shall be paid 100% at the time the project reaches final acceptance. The negotiated overhead and profit is inclusive of any contingency work performed.
- 7.1.04 General Conditions For Construction Phase – The Construction Manager shall be paid for General Conditions proportionally to the ratio of the cost of the Work in place. However, insurance costs including builders risk, payment and performance bonds, required herein will be paid in it’s entirety upon submission of proof of payment.
- 7.1.05 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, as the amount for Construction Phase Fee, Overhead and Profit, and, bonds the percentage indicated above in Article 7.1. This amount shall be the Construction Manager’s exclusive remedy for such changes in the Work.

7.2. Construction Manager’s Deliverables

7.2.01 Pre-Design

- .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, out 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)

7.2.02 Design Phase

- .1 Monthly Summary of project meetings (Agreement 3.3.1)
- .2 Document Reviews / report at each phase (Agreement 3.3, .2, .4, .5). Refer also to attached procedures and CM review form. (Exhibits G and H).
  - Schematic Design

- Design Development
  - 50% Construction Documents
  - 100% Construction Documents
- 3 Preliminary Master Project Schedule Updates (Agreement 3.3, .6)
    - Schematic Design
    - Design Development
    - 50% Construction Documents
  - 4 Cost Estimate Updates (Agreement, 3.3,.7)
    - Schematic Design
    - Design Development
    - 50% Construction Documents
    - 100% Construction Documents
  - 5 Market Analysis/sub-contractor report (Agreement, 3.2,.8)
  - 6 Guaranteed Maximum Price (GMP) Manual (Agreement 3.3.10)

7.2.03 Bidding and Award Phase

- .1 Proposed Subcontractor list with MWBE participation.
- .2 Bid Packages List (Agreement 3.4, .3)
- .3 Pre-bid conference attendance list and summary report (Agreement, 3.4, .4)
- .4 Recommendations for award (Agreement, 3.4, .6)
- .5 Bid advertisements (Agreement 3.4.5.1)
- .6 Schedule of Values (Agreement 8.1)
- .7 Fee due to the Construction Manager shall be payable.

7.2.04 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).

7.2.05 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)

.7.2.06 Other Deliverables

- .1 Insurance Policies (Agreement 8.1.7)
- .2 Payment Applications (Agreement 8.2 through 8.14)
- .3 Dollar Value / Time graphs (Agreement, 8.12)
- .4 Agreement Execution and Contract Bonds (Agreement 9.01)
- .5 Closeout documents as set forth in the Contract Documents.

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7.2.07 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 During the Pre-Design, Design, and Bidding and Award Phases the Construction Manager shall provide a Schedule of Values indicating the progress payment schedule and maintain payroll records for any and all staff assigned to the Work
- .2 The Construction Manager shall maintain and update the Schedule of Values originally provided to the Owner with the GMP Addendum.
- .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.
- .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, 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.

8.2 The Owner shall pay the Contract Price to the Construction Manager in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act..

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 Document 01290 and include whatever supporting information as may be required by the Owner. Ten percent (10%) retainage shall be held on all payments of that part of the contract price allocable to Contract Requirements properly provided and labor, material and equipment properly incorporated in the project. 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 Owner shall Pay for materials and equipment properly stored onsite, consistent with construction sequencing and verified by the Project Manager.

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- 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 substantial compliance with the requirements of the Contract Documents, 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 may also 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 Dollar Value/Time Graphs: Each of the Construction Manager's Application for Payment shall be accompanied by a graph, prepared by the Construction Manager, that consecutively tracks the percentage of completion of both the Application for Payment's dollar value attained and the contract time (calendar days) elapsed, all coinciding with the date of the Application for Payment.
- 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 payments made under this Contract 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: Final payment constituting the unpaid balance of the Cost of the Project and the

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Construction Manager's fee, shall be due and payable as described in this Article after the Owner has accepted occupancy of the project, provided that the Project be then finally completed, that the Construction Manager has verified by its signature that it has completed all items specified, and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager and the Project Consultant shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed.

- 8.16 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, if any, 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 lien;
  - .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;
- 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 (11<sup>th</sup>) month warranty inspection work is satisfactorily completed.
- 8.20 Delayed Payments by Owner: Payments will comply with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act, as amended.

## ARTICLE 9 CONTRACT BONDS

- 9.01 The Contract 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 of the Contract, 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.

- 9.02 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 Contract and as security for the payment of all persons performing labor and providing materials in connection with this Contract.
- 9.03 The form of Bonds required is included elsewhere in the Contract Documents. This is in addition to any bonds of subcontractors or others.

**ARTICLE 10  
NOTICES**

- 10.01 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:

<b>Party:</b>	<b>Address:</b>	
Owner:	SUPERINTENDENT OF SCHOOLS The School Board of Broward County, Florida	600 Southeast Third Avenue Fort Lauderdale, FL 33301 Attn: James F. Notter
With Copy To:	Deputy Superintendent of Schools	1700 S.W. 14 <sup>th</sup> Court Fort Lauderdale, Florida 33312 Attn: Michael C. Garretson
Construction Manager:	BBBBB	BBBBB BBBBB BBBBB
Surety:	BBBBB	BBBBB BBBBB BBBBB
Surety's Agent:	BBBBB	BBBBB BBBBB BBBBB
Project Consultant:	BBBBB	BBBBB BBBBB BBBBB

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

**ARTICLE 11  
AUTHORITY PROVISION**

- 11.01 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 12  
NON-DISCRIMINATION PROVISION**

- 12.01 **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**

- 13.01 **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**

- 14.01 **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**

- 15.01 **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**

- 16.01 **Background Screening** – Construction Manager agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that Construction Manager, its agents, subconsultants and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of 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 SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement.

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 Section 1012.32 and Section 1012.465, Florida Statutes in addition to any other indemnification obligations that may be imposed upon Construction Manager pursuant to Article 30 of the General Conditions and the laws of Florida.

In witness thereof, the said \_\_\_\_\_ (Construction Manager), 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.

OWNER

CONSTRUCTION MANAGER

THE SCHOOL BOARD BROWARD  
COUNTY, FLORIDA

\_\_\_\_\_  
(please print or type name)

SEAL

By: \_\_\_\_\_  
Beverly A. Gallagher, Chair

By: \_\_\_\_\_  
President of Corporation

By: \_\_\_\_\_  
James F. Notter,  
Superintendent of Schools

By: \_\_\_\_\_  
Witness or Attest Secretary

Approved By:

\_\_\_\_\_  
School Board Attorney

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME this day appeared \_\_\_\_\_ (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 \_\_\_\_\_, 200.

\_\_\_\_\_  
Notary Public State of Florida

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.