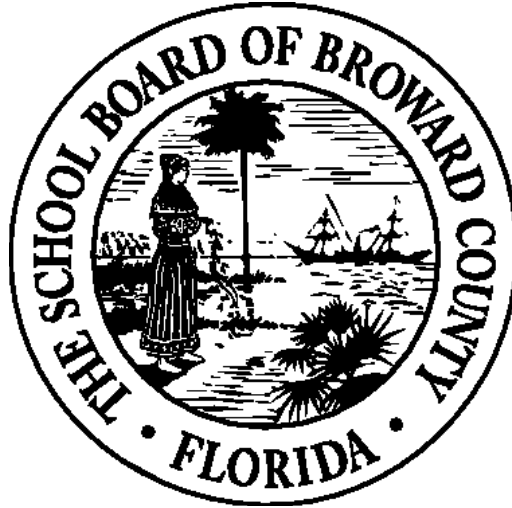


THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA



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 (3rd) 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 (6th) and eleventh (11th) 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 (11th) 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:

Party:	Address:	
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 th 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: _____
Robin Bartleman, 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.

GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1. DEFINITIONS

- 1.1 Definitions:
- 1.1.01 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.
- 1.1.02 Construction Manager - The "party of the second part", of the Contract. The person, firm or corporation with whom a contract has been made with the Owner for the performance of the Work defined by the Contract Documents.
- 1.1.03 Contract Documents - The Contract Documents consist of the Agreement Form, these General Conditions, Addenda, Documents contained in the Project Manual, Drawings, Specifications, any General and Supplementary Conditions (Divisions 0 and 1), and all modifications issued after execution of the Contract.
- 1.1.04 Estimate - The Construction Manager's latest estimate of probable project construction costs.
- 1.1.05 Facilities and Construction Management Division - The Facilities and Construction Management Division is the Owner's organizational entity which acts as liaison between the Consultant and Owner and provides day to day management, plan review, inspection and other professional services on the Owner's behalf.
- 1.1.06 Inspector of Record: See Article 1.1.29 of General Conditions.
- 1.1.07 Final Completion - Means that date subsequent to the date of Substantial Completion at which time the Construction Manager has completed all of the Work (or designated portion thereof) in accordance with the Contract Documents as certified by the Project Consultant and/or approved by the Owner. In addition, Final Completion shall not be deemed to have occurred until any and all governmental bodies, boards, entities, etc., which regulate or have jurisdiction of the Work, have inspected, approved and certified the Work.
- 1.1.08 Fixed Limit of Construction Cost (FLCC) - (See also 1.1.14) the Fixed Limit of Construction Cost, referred to hereinafter as FLCC, is the total dollar value of the Construction Manager's fees, contingency, and cost of the work.
- 1.1.09 Guaranteed Maximum Price: The GMP is the maximum amount of money that the Owner shall pay the Construction Manager for all the work described in the contract documents.
- 1.1.10 Journeyman - A person working in an apprenticeable occupation who has successfully completed a state registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation. "Established industry practices" means the number of years of training required by the majority of registered program standards for the particular trade or occupation. A "certified Journeyman" is a journeyman who holds a State of Florida Certification or Broward County Certificate of Competency for a particular trade or craft."
- 1.1.11 Notice to Proceed - The term Notice to Proceed shall mean a written work order based on a defined scope of work, prepared by the Facilities Project Manager and issued to the Construction Manager.
- 1.1.12 Owner - The School Board of Broward County, Florida. The School Board of Broward County, Florida, through its Board, must approve all Agreements, changes in the scope of work, change orders, fees, final acceptance of the project final payment and use of the contingency as set forth in Article 6.1 of the Agreement between Owner and Construction Manager.

- 1.1.13 Owner's Representatives - The Deputy Superintendent of Facilities and Construction Management or designee.
- 1.1.14 Owner's Construction Budget: (See also 1.1.08) Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is identified in Exhibit B, including all contingency, Construction Manager fees, and costs of the work. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 6 of the Agreement between the Owner and Construction Manager.
- 1.1.15 Other Contractors - Any person, firm or corporation with whom a Contract has been made by the Owner for the performance of any work on the site, which work is not a portion the Work covered by the Contract.
- 1.1.16 Project Consultant - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services for development of the design and Contract Documents for the work of this Project and, any additional services as may be required during the construction and warranty phase.
- 1.1.17 Project Manager - An employee of The School Board of Broward County, Florida, who is designated by the Deputy Superintendent to provide direct interface with the Construction Manager with respect to the Owner's responsibilities.
- 1.1.18 Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design, permitting, construction and code inspection necessary to build the component parts of the project identified in project manual.
- 1.1.19 Phase - A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors.
- 1.1.20 Punch List - A list of items of work required by the Contract Documents which after inspection by the Owner and the Construction Manager has been termed to be deficient and/or inconsistent with the Contract Documents.
- 1.1.21 Subcontractor - A person or entity other than a materialman or laborer who enters into a Contract with Construction Manager for the performance of any part of Construction Manager's Work. The term "Subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 1.1.22 Sub-subcontractor - A person or entity other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.
- 1.1.23 Submittals - Are prepared by the Construction Manager or those working on his behalf (subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. The Construction Manager's submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.
- 1.1.24 Substantial Completion - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract

Documents such that the Owner or its designee can enjoy use or occupancy of the work performed by Construction Manager and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether substantial completion has been achieved.

- 1.1.25 Subconsultant - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Owner or Construction Manager to furnish professional services to the project.
- 1.1.26 Superintendent or Construction Manager's Project Manager - The executive representative for the Construction Manager present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of superintending the work efficiently as designated.
- 1.1.27 Superintendent of Schools - The duly appointed executive officer of the Owner authorized to act by and through the School Board of Broward County.
- 1.1.28 Surety - The firm, corporation, or individual which is bound by the Contract Bond with and for the Construction Manager, and which engages to be responsible for the Construction Manager's acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.1.29 Building Code Inspector: Employees of The School Board of Broward County, Florida, and others designated by the Facilities and Construction Management Department who are certified as by the Florida Department of Education (DOE). BCI's may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager and Project Consultant. Any references to "UBCI" within any documents shall mean BCI.
- 1.1.30 Work - The totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute the whole or a part of the Project.
- 1.1.31 Written Notice - Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to him who gives notice. Electronic, FAX or other telephonic transmission shall not be considered as written notice.
- 1.1.32 Contingency Use Directive (CUD) – A CUD is issued and approved by the Owner for the purpose of accounting for unforeseen increases or decreases in the construction cost and/or to be utilized for unforeseen circumstances as set forth in Article 6.1 of the agreement .
- 1.1.33 Change-Order – A change order is issued and approved by the Owner for additions or deletions in the scope of work or services provided by the Construction Manager. A change order shall increase or decrease the GMP subsequent to approval of the final GMP.
- 1.1.34 Construction Change Directive (CCD) – A CCD is issued and approved by the Owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner's sole discretion.

ARTICLE 2. COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS.

- 2.1 The Construction Manager represents that:
 - 2.1.01 The Construction Manager and Subcontractors will fully examine and compare all Drawings, Specifications and other Contract Documents including but not limited to those relating to the architectural, structural, mechanical, electrical, civil engineering and plumbing elements and have compared and reviewed all general and specific details on the Drawings and the various technical and administrative requirements of the Specifications.
 - 2.1.02 With respect to all construction materials, labor, methods, means, techniques, and sequence of procedures required to carry out the Work or safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that Construction Manager is aware of as a result of the examination and comparison of the Contract Documents have been communicated to the Owner and Project Consultant in writing.
 - 2.1.03 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work shall be in accordance with the requirements of the Contract Documents.
 - 2.1.04 The Contract Time is adequate for the performance of the Work.
- 2.2 The Construction Manager is responsible for all means, methods, techniques and sequencing of construction.
- 2.3 If, after execution of this Construction Contract, the Construction Manager detects a conflict, discrepancy, error or omission in the Contract Documents then it shall immediately notify Project Consultant and Owners representative prior to proceeding with the specific portion of the Work.

ARTICLE 3. INTENT AND INTERPRETATION.

- 3.1 With the respect to the intent and interpretation of this Contract, the Owner and the Construction Manager agree as follows:
 - 3.1.01 The Construction Manager shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the Owner and the Project Consultant of any conflict, ambiguity, error or omission which the Construction Manager may find with respect to these documents before proceeding with the affected Work.
 - 3.1.02 The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all.
 - 3.1.03 The intent of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Work. The Construction Manager shall continually refer to drawing, specifications and other Contract Documents in this regard.
 - 3.1.04 In the event of a conflict among the Contract Documents, the most stringent requirement of the specifications will prevail over drawings. Larger scale drawings will prevail over smaller scale drawings.
- 3.2 The Owner shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder and may involve the Project Consultant with specific interpretations. This provision does not relieve the Project Consultant and/or Project Architects from their contractual obligations to the Owner.
 - 3.2.01 The Owner shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of the Construction Manager, and shall render written decisions, within a reasonable time, on all claims, disputes, change order requests, substitution requests, requests for

interpretation and other matters in question relating to the execution or progress of the Work or the interpretation of the Contract Documents.

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

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

ARTICLE 5. TEMPORARY UTILITIES:

- 5.1 Water For Building Work: The Construction Manager shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Construction Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 5.2 Electrical Energy: The Construction Manager shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the Construction Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 5.3 Temporary Sanitary Facilities And Sewers: The Construction Manager shall provide and maintain in a neat and sanitary condition such accommodations and facilities for the use of his employees as may be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues.
- 5.4.01 No nuisances will be permitted.
- 5.4.02 Upon completion of Work, such facilities shall be removed and the premises left in a sanitary condition.
- 5.4.03 Construction Manager is not permitted to use restrooms or other sanitary facilities within the Owner's existing building or on-site facilities unless the contrary is provided for elsewhere in the Contract Documents.

ARTICLE 6. OWNER OCCUPANCY

- 6.1.01 The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. It shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Construction Managers, on line in such conditions as will satisfy Owner operational requirements.
- 6.1.02 It shall conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. It shall advise the Owner ' s representatives of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. It shall hold job-site meetings at least once a week with the Project Construction Team and at least once each week with the subcontractors, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

ARTICLE 11. QUALITY CONTROL

- 11.1 The Construction Manager shall develop and maintain a program, acceptable to the Owner, to assure quality control of the construction. It shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work.

ARTICLE 12. LICENSE AND PERMITS

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

ARTICLE 13. JOB SITE REQUIREMENTS

- 13.1 The Construction Manager shall provide for each of the following activities as a part of his Construction Phase fee:
- .1 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc;
 - .2 Maintain a roster of companies on the project with names and telephone numbers of key personnel;
 - .3 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline;
 - .4 Provide labor relations management for a harmonious, productive project;
 - .5 Provide a safety program for the project to meet OSHA requirements;
 - .6 Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice;
 - .7 Provide a quality control program as developed under Article 11.01 herein above;
 - .8 Miscellaneous office supplies that support the construction efforts which are consumed by his own forces;
 - .9 Travel to and from his home office to the project site.
- 13.2 The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
- .1 Schedule the services of independent testing laboratories (Selected and in privity of contract with the Owner) and provide the necessary testing of materials to ensure conformance to contract

- requirements;
- .2 The printing and distribution of all required shop drawings.

ARTICLE 14. RESPONSIBILITY FOR WORK SECURITY

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

ARTICLE 15. SAFETY, PROTECTION OF WORK AND PROPERTY

- 15.1 Construction Manager shall be responsible for conducting all operations under this Construction Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. Construction Manager shall continuously and diligently inspect all work, material and equipment to discover any conditions which might involve such risks and shall be responsible for discovery and correction of any such conditions.
 - 15.1.01 The Construction Manager, subcontractors and their employees shall prohibit the use of alcoholic beverages, smoking inside buildings and/or not in designated areas, food or beverages inside buildings, and carrying of firearms or weapons on school district property or be subject to removal and termination of subject employee.
- 15.2 Safety Precautions and Programs:
 - 15.2.01 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance on the Contract.
 - 15.2.02 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or other hazardous materials which has not been rendered harmless, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner and Project Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos, polychlorinated biphenyl (PCB) or other hazardous materials, or when it has been rendered harmless, by written

agreement of the Owner, Construction Manager and Project Consultant.

- 15.2.03 The Construction Manager shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl: (PCB) or other hazardous materials:
- 15.3 Safety of persons and Property.
- 15.3.01 The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- .1 Employees on the Work and other persons who may be affected thereby;
 - .2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager ' s Subcontractors or Sub-subcontractors; and
 - .3 Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 15.3.02 The Construction Manager shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety or person or property or their protection from damage, injury or loss.
- .1 The Construction Manager and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health act (OSHA) of 1970.
 - .2 The Construction Manager shall prominently post and maintain at the job sites;
 - .3 OSHA 200: Log and summary of occupational injuries and illness.
 - .4 OSHA 2203: Provisions of the Act poster.
- 15.3.03 The Construction Manager shall implement and maintain a continuing safety program applicable to all Construction Manager's employees, Subcontractors, and Sub-subcontractors, to include:
- .1 Designating a responsible member of the Construction Manager ' s organization at the site as the Construction Manager ' s Safety Officer whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Construction Manager ' s superintendent unless otherwise designated by the Contractor in writing to the Owner and the Project Consultant.
 - .2 Holding weekly safety meetings with employees and Subcontractors,
 - .3 Implementing OSHA Voluntary Protection Programs.
 - .4 Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.
 - .5 Compliance with the Drug Free Work Place Act of 1998, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Document 00457, Drug-Free Workplace Certification.
 - .6 Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of

adjacent sites and utilities.

.7 Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their right in these regards.

15.3.04 When use of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

15.3.05 The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Construction Manager, Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible, except damage or loss attributable to acts or omissions of the Owner or Project Consultant or anyone directly employed by either of them, or by anyone of whose acts either of them may be liable, and not attributable to the fault of negligence of the Contractor.

15.3.06 The Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

15.3.07 Building materials, Construction Manager's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which it shall store all materials which would be damaged by weather. This shall in no manner relieve the Construction Manager from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as defined by applicable codes but not less than a 120 mile per hour wind uplift force. Construction Manager shall provide engineering or other evidence to prove compliance, if requested by the Owner.

15.3.08 Construction Manager shall remove graffiti without damage to substrate or paint over graffiti within forty-eight (48) hours of its discovery.

15.4 Emergencies: In an emergency affecting safety of persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury or loss.

15.5 Construction Manager shall provide a complete copy of all accident reports within five (5) days of reported accident to Owner.

ARTICLE 16. MATERIALS

16.1 The Construction Manager shall provide materials and equipment as required in the Contract Documents. No substitution will be permitted except in the instance where a material is no longer available during the progress of the Work or is deemed by the Owner to be no longer suitable or appropriate for incorporation into the Work or for obvious economic benefits accruable to the Owner or as approved by the Owner.

16.2 Any such substitution must be approved by the Project Consultant and Owner prior to incorporation of the proposed substitution into the Work.

16.3 Proposed substitutions must be submitted for consideration from the Construction Manager to the Project Consultant and the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Construction Manager's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available.

16.4 Product delivery lead times shall not serve as a basis for any substitution request except for where approved in

advance by the Owner. All additional costs incurred by the Owner as the result of any substitution shall be the responsibility of and borne by the Construction Manager.

- 16.5 The Construction Manager shall make written request to the Project Consultant and Owner for and obtain his written approval of the use of any materials proposed for use when "approval" materials are specified or a performance type specification is utilized without mentioning any standard by name.
- 16.6 If, in the opinion of the Construction Manager, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Construction Manager shall request a Change Order Proposal for modifying the Contract to incorporate the respective changes to the Work required, the Contract amount, and the Contract Time as beneficial to the Owner.

ARTICLE 17. WORKFORCE COMPOSITION

- 17.1 The following requirements apply to all aspects of the Work where skilled crafts or trades are to be utilized:
- 17.2 The ratio of journeymen utilized shall be two (2) journeymen to one other worker. When two (2) workers involved in the crafts are employed, the first employed shall be a journeyman, and the second may be either a journeyman or a worker.
- 17.3 The Construction Manager shall utilize at least one certified journeyman that holds a State of Florida Certification or a certificate of competency obtained through a proctored examination in Broward County for the respective crafts or trades required for the execution of the Work.
- 17.4 For trades or crafts for which licenses or Certificates of Competency are required in Broward County, no Work may be performed or person employed as a worker in that trade unless the Work is under the direct supervision of a master or certified journeyman, certified in that trade. A certified master or certified journeyman shall not provide direct supervision to more than three (3) other workers or uncertified journeymen at a job site.
- 17.5 The Construction Manager shall post on the inside of the Construction Manager's on-site project office and maintain by monthly updating a current list, available for the Owner and Project Consultant's use, of the names, areas of specialty, and license or certificate numbers, or all journeymen, certified journeymen, and certified masters utilized for prosecution of the Work, including those used by Subcontractor.
- 17.6 Work shall not commence in a particular trade or specialty until the Construction Manager's posted list has been updated to include that particular trade or specialty.
- 17.7 The Owner will not consider requisitions for payment for Work completed by a particular trade or specialty unless Journeymen, certified Journeymen, or certified Masters of that respective trade or specialty have been properly included on the Construction Manager's posted list.
- 17.8 The format for the posted list should begin with the Construction Manager's company name; name of qualifier with their certificate or registration number; a listing of all the Construction Manager's employee names, work trade and work skill; journeymen with their license number or certificate of competency; or a designation as unskilled labor. The remainder of the list should follow the same format listing all the subcontractors and any other person performing labor on the project site. A copy of all licenses, certificates, registrations, and state registered apprenticeship documents should be kept on file in the Construction Manager's field office to substantiate his posted list.
- 17.9 Requirements for workforce quality specified above do not apply to those elements of the Work requiring only unskilled labor.
- 17.10 The Construction Manager shall employ no illegal aliens or other individuals not properly registered with and

allowed to work by the United States Immigration and Naturalization Service (INS).

- 17.11 Construction Manager shall be assessed, and the Owner may deduct from each applicable Application for Payment, \$250 per day for failure to comply with these workforce composition requirements contained herein beginning three days after written notice of non-compliance is received by the Construction Manager.

ARTICLE 18. INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP.

- 18.1 All material and equipment provided and work performed shall be properly inspected by Construction Manager, and shall at all times be subject to quality surveillance, inspections, observations or quality audit by Owner, Facilities Project Manager and any inspectors conducting an inspection pursuant to code, law, regulations, etc.
- 18.2 Construction Manager shall provide safe and adequate facilities, and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit.
- 18.3 The Construction Manager shall permit and facilitate inspection of the Work by the Owner, Facilities Project Manager, Inspectors for any governmental agency, authority, or board including but not limited to Uniform Building Code Inspectors (BCI).
- 18.4 Owner also reserves the right to designate others such as consultants, commissioning authorities, test and balance agents, forensic specialists, etc. to conduct inspections during or subsequent to the Work as Owner in its discretion desires.
- 18.5 Owner shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its Subcontractors for such quality surveillance, observation or quality audit and to determine the status of the Work.
- 18.6 In the event the Owner requires a factory inspection, the Construction Manager shall notify the suppliers that the material shall not be produced or fabricated without due notice to the Owner and an opportunity for such inspection.
- 18.7 If any designated Work should be covered up without approval or consent of the Owner, it must, if required by the Owner, be uncovered for examination at the Construction Manager's expense.
- 18.8 If any material, equipment or workmanship is determined by Owner or Inspector either during performance of the Work or on final quality surveillance, or during any applicable warranty period, to be defective or not complying with the requirements of this Construction Contract, Owner or Inspector will notify Construction Manager in writing that such material, equipment or portions of the Work is rejected and Owner reserves the right to withhold payment on any such item or seek compensation from Construction Manager for same. Thereupon, Construction Manager shall, at its own expense, immediately remove, replace or correct such defective material, equipment or portions of the Work by making the same comply strictly with all requirements of the Contract Documents. The Construction Manager shall be responsible for the costs of any additional site observations, special inspections and/or testing, or other activities of the Owner made necessary by the correction of such defective materials, equipment or portions of the Work.
- 18.9 Neither the failure to make such quality surveillance, observation or quality audit, nor to discover defective workmanship, materials, or equipment, shall prejudice the rights of Owner to correct or reject the same as hereinafter provided.

ARTICLE 19. ADMINISTRATIVE RECORDS

- 19.1 The Construction Manager will maintain at the job site, unless agreed to otherwise by the Facilities Project Manager, on a current basis, files and records such as, but not limited to the following:

General Conditions of the CM Agreement
September 11, 2001, DH 1-7-02
July 6, 2004 (r1 5-26-05) Revised 9-28-05,
April 19, 2006 MA, October 16, 2006 MA

- 19.2 Contracts or Purchase Orders, Shop Drawing Submittal/Approval Logs, Equipment Purchase/Delivery Logs, Contract Drawings and Specifications with Addenda, Warranties and Guarantees, Cost Accounting Records, Sales Tax Recovery Status Report, Labor Costs, Material Costs, Equipment Costs, Cost Proposal Requests, Payment Request Records, Meeting Minutes, Cost-Estimates, Lab Test Reports, Insurance Certificates and Bonds, Contract Changes, Purchase Orders, Material Purchase Delivery Logs, Technical Standards, As-Built Marked Prints, Operating & Maintenance Instruction, Daily Progress Reports, Monthly Progress Reports, Correspondence Files, Transmittal Records, Inspection Reports, Bid/Award Information, Bid Analysis and Negotiations, Punch Lists, Project Manual,
- 19.3 The project records shall be available at all times to the Owner and Project Consultant for reference or review.

ARTICLE 20. OWNER'S RESPONSIBILITIES

- 20.1 Owner's Information - The Owner shall provide full information regarding its requirements for the project to the Construction Manager.
- 20.2 Project Consultant's Agreement - The Owner shall retain a Project Consultant to design and prepare construction documents for the project. The Project Consultant's services, duties and responsibilities are described in the Agreement between the Owner and the Project Consultant, a copy of which will be furnished to the Construction Manager.
- 20.3 Site Survey and Reports - The Owner shall furnish all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description of the project.
- 20.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures and for permanent changes in existing facilities.
- 20.5 Drawings and Specifications - The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.
- 20.6 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense.
- 20.7 Project Faults or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give prompt written notice thereof to the Construction Manager and Project Consultant.

ARTICLE 21. ADMINISTRATION OF THE CONTRACT

- 21.1 The Construction Manager will provide Administration of the Sub-contracts. The Owner will provide administration of the contract between Owner and Construction Manager.
- 21.2 Neither the Project Consultant nor the Owner will be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work or for the acts of omission or commission of the Construction Manager, its Subcontractors or their agents or employees or any other person performing any of the work.
- 21.3 The Owner will have the authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing. The Owner's authority to act under this Paragraph, nor any decision made by it in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility

of the Owner to the Construction Manager, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 21.4 The Construction Manager shall forward all communications to the Owner's representative and copy to the Project Consultant.
- 21.5 The Construction Manager shall submit Applications for Payment to the Owner for approval prior to Payment to the Construction Manager.
- 21.6 The Project Consultant shall approve shop drawings for design only, the Construction Manager being responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Drawings and Specifications and other Contract Documents.
- 21.7 The duties, responsibilities and limitations of authority of the Project Consultant and the Owner will not be modified nor extended without written consent of the Construction Manager, the Project Consultant, and the Owner.
- 21.8 Lines of Communication - During pre-construction and construction activities Construction Manager shall direct all communications to the Project Manager with a copy to Project Consultant. The Owner and Project Consultant shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality, except in cases of emergency and/or threat to property or person.

ARTICLE 22. INSPECTION

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

ARTICLE 23. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

- 23.1 In the event that the Construction Manager covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner, such work shall be uncovered and displayed for the Owner's inspection upon request, and shall be reworked at no cost in time or money to the Owner.
- 23.2 If any of the work is covered, concealed or obscured in a manner not covered by Article 23.01 above, it shall, if directed by the Owner, be uncovered and displayed for the Owner's inspection. If the uncovered work conforms substantially with this Contract, the costs incurred by the Construction Manager to uncover and subsequently replace such work shall be borne by the Owner; otherwise, such costs shall be borne by the Construction Manager.

- 23.3 The Construction Manager shall, at no additional cost in money to the Owner or extension of time, correct work rejected by the Owner as defective or failing to conform to this Contract. Additionally, the Construction Manager shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.
- 23.4 In addition to its warranty obligations set forth elsewhere herein, the Construction Manager shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months following the date of Owner Occupancy of the Project or a designated portion thereof.
- 23.5 The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work.
- 23.6 In such event, the Contract Price shall be reduced, at Owner ' s option, by the greater of (i) the reasonable costs of removing and correcting the defective or nonconforming work, or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work.
- 23.7 If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Construction Manager shall, upon written demand from the Owner, pay the owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 24. SUBCONTRACTS

- 24.1 The Contract Documents make no attempt to fix the scope of the Work of any Subcontractor nor the responsibilities of any such Subcontractor, it being understood that the Construction Manager shall fix the scope of all Work and responsibilities of the Subcontractor. Construction Manager shall not replace Subcontractor without good cause.
- 24.2 The Construction Manager shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:
- 24.3 The general form of Subcontract Agreement used by the Construction Manager within thirty (30) days of execution of the GMP Addendum.
- 24.4 Updated listings of Subcontractors denoting changes to the list submitted within ten (10) days of said change.
- 24.5 Copies of executed Subcontractor Contracts within ten (10) days of their execution.
- 24.6 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application For Payment submitted by the Construction Manager.
- 24.7 All contracts with Subcontractors shall incorporate by reference the terms and conditions of the Contract Documents.
- 24.8 The Construction Manager shall cause and require to be included in all Subcontracts a provision for the benefit of the Owner binding the Subcontractors to remain bound by the Subcontracts in the event the Construction Manager is replaced by another Construction Manager pursuant to the term of the Contract Documents. The Construction Manager shall also include in all Subcontracts a provision requiring the Subcontractor, in the event of the Construction Manager's termination, to consent to the assignment of their Subcontracts to the Owner.
- 24.9 The Owner may at any time request from the Subcontractors, or any of them, a sworn statement of account with the Construction Manager and the Construction Manager shall cause to be included in all Subcontracts a requirement that the Subcontractors provide said sworn statement upon Owner's request.
- 24.10 Each Subcontractor and supplier must agree to assign all of its warranties to Owner. In addition each Subcontractor and supplier must warrant all of its Work, equipment, materials and labor to Owner in accordance with the terms and provisions of its contractual obligations to Construction Manager and any legal or statutory

provisions that apply to its work, materials or equipment.

- 24.11 Owner may at its discretion require Construction Manager to have major sub-subcontractors or suppliers comply with the requirements of this Article or other provisions of the Contract Documents.
- 24.12 Any disputes which may arise in this connection between the Construction Manager and any Subcontractor must be settled between the parties concerned and the Owner will not undertake, nor be in any way responsible for, the settlement of such disputes.
- 24.13 No Subcontractor shall under any condition relieve the Construction Manager of his liabilities and obligations to the Owner under his Contract and the Construction Manager shall be solely responsible to the Owner as provided herein.
- 24.14 All subcontracts shall provide:
- .1 LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
 - .2 That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Project Consultant or attributable to the Owner or Project Consultant and including claims based on breach of contract or negligence, shall be an extension of its contract time.
 - .3 In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.
 - .4 Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.
 - .5 Each subcontract shall require that any claims by subcontractor must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.
- 24.15 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 24.16 Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Project Consultant. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety.
- 24.17 Subcontracts to be provided - The Construction Manager shall include a copy of each subcontract, including the general and supplementary conditions, in the project manual.
- 24.18 Bonding of Subcontractors - The Construction Manager shall submit proof, in the form of copies of properly executed bond forms, that the following major subcontractors have provided a performance bond and a payment bond to the Construction Manager and Owner as dual obligees with a corporate surety approved by the United States Treasury Department and authorized to do business in the State of Florida and otherwise acceptable to the

Owner:

- .1 HVAC/Mechanical
- .2 Electrical
- .3 Plumbing
- .4 Roofing
- .5 Shell Contractor

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

24.18.02 The respective performance and payment bonds shall:

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

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

ARTICLE 25. CONSTRUCTION MANAGER'S FEES

25.1 Adjustments in Fee - For changes in the project as provided in Article 27 of the General Conditions, the construction phase fee shall be adjusted as follows:

- (1) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.
- (2) The Construction Manager shall be paid an additional fee should the duration of the construction stipulated herein for Final Completion extend beyond the approved final completion date (insert Final comp Months) months after the Notice-To-Proceed, due to no fault of the Construction

Manager. The Construction Manager's Additional Construction Phase Fee and General Conditions set forth in Article 7.01 of the Agreement will be (insert AddConPhaseFee) per consecutive calendar day, for each day or portion thereof. The Construction Manager's staff during such time extensions shall be that shown in Exhibit E and F.

- (3) The Construction Manager will not be due any Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed \$100,000. Should the GMP be increased by more than \$100,000 under the terms of Article 27 hereinafter due to no fault of the Construction Manager, the Construction Manager's Overhead and Profit for the Construction Phase will be the negotiated amount in Article 7.1 of the Agreement and indicated as a percent in "Fee for Change Orders", of that portion of the cumulative increases in the GMP that exceed the GMP by more than \$100,000.
- (4) The Construction Manager shall not be paid overhead and profit on any additional cost item of work, not included in GMP, for which the Construction Manager to the best of its ability should have reasonably discovered in their review of Contract documents (see also Paragraph 3.3.2 and exhibits G and H), review of other project documentation and existing site conditions.
- (5) Construction Manager's Exclusive Remedy: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Project Consultant, or is attributable to the Owner or the Project Consultant, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and payment of Construction Phase Fees, General Conditions set forth in Article 7.01 of the Agreement, and Overhead and Profit for Construction Phase as provided above.

25.2.01 Costs and Expenses Included in Fee - The following (a non-exclusive list) are included in the Construction Manager's fee for services during the Construction Phase and not included in the cost of the project.

- .a Salaries or other compensation of the Construction Manager's employees at the Project site or Broward Office.
- .b The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on Exhibits E and F.
- .c General operating expenses related to this project at the Construction Manager's Broward offices.
- .d The costs of all data processing staff.
- .e General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 26 of the General Conditions.
- .f Those services set forth in Article 3 of the Agreement between Owner and Construction Manager.
- .g Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and other supplies.
- .h Direct tax saving purchase program. The Board has implemented a Direct Tax Savings Purchase Program (DOPP) as per Board Policy 3320. The Construction Manager shall administer the DOPP according to the terms included in Document 01295 attached to this agreement.

ARTICLE 26. COST OF THE PROJECT

26.1 Definition - The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the Construction Manager which are not included in Article 25. Such costs shall include the items set forth below in this Article.

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

26.2 Direct Cost Items

- 26.2.02 Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
- 26.2.03 Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to contract under this Agreement. This includes any subcontractor bonds the Construction Manager is required to procure.
- 26.2.04 Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work-
- 26.2.05 Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- a. Proposed rental rates and related fair market values for Contractor owned (affiliate owned, subsidiary owned, or related party owned) equipment shall be submitted to and approved by Owner prior to being used in connection with the Work. The projected usage for each piece of equipment proposed to be rented, and estimated total rentals shall be submitted for approval in advance in a form satisfactory to Owner so that an appropriate lease versus buy decision can be made.
 - b. Each piece of equipment to be rented shall have hourly, daily, weekly, and monthly rates submitted to and approved by Owner in advance before equipment rental charges will be considered reimbursable.
 - c. The reimbursable equipment rental rates shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Owner and Contractor will use the applicable portions of the latest edition of the Army Corps of Engineers equipment rental rate guide (Construction Equipment Ownership and Operating Expense Schedule exclusive of the costs for fuel, filters, oil and grease) to mutually agree in advance on hourly, daily, weekly, and monthly rental rates to use during the project. If these two reference sources do not contain specific listings for pieces of equipment to be rented, the two parties may mutually agree to reimburse the Contractor up to 75% of the current competitive rental rates from local third party equipment rental companies.
 - d. The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 75% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice and submitted to the Owner along with a proposed fair market value in accordance with the procedure outlined above. The fair market values to be used for purposes of this contract clause will be subject to advance written approval of the Owner. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for like pieces of equipment will be combined if the pieces of equipment were not used at the same time.
 - e. Fair market value for used material and equipment as referred to in this contract shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was

initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

- f. Rental charges for equipment which is not owned by Contractor or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable, will be reimbursable at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to Owner as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.
- g. All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under this contract except as covered by insurance procured for the work
- h. The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to the Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition. At the completion of the project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Owner, or at Owner's option, Contractor may keep any such equipment for an appropriate credit to job cost, which will be mutually agreed to by Owner and Contractor.
- i. All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repair and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

- 26.2.06 Cost of the premiums for all insurance and cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the construction project.
- 26.2.07 Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
- 26.2.08 No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.
- 26.2.09 Minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
- 26.2.10 Costs for trash and debris control and removal from the site.
- 26.2.11 Cost incurred due to an emergency affecting the safety of persons and property.
- 26.2.12 If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP Schedule of Values breakdown where it is deemed advantageous due to schedule or economic benefit.
- 26.2.13 Transportation greater than 100 miles from the site for Construction Manager's personnel employed directly for the project. Such transportation must be approved in advance by the Owner, and may be in accordance with the Construction Manager's standard personnel policy but not exceeding the limits established by Florida Statutes

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- 26.2.14 Costs for watchman and security services for the project.
- 26.2.15 Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
- 26.2.16 Costs for such temporary facilities at the Project site during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities and telephones.
- 26.2.17 Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of its work under the Agreement, times a multiple of (Multiplier) to cover fringe benefits. The Multiplier shall be defined as the employer's net actual cost of payroll taxes (FICA, Medicare, UITA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer's worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, and other variables. The Construction Manager shall reduce his standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. The percentage used for the multiplier will be examined at the conclusion of the project and an adjustment shall be made if it is determined that actual percentage should have been more or less than the percentage used.
- 26.2.18 Wages shall not be paid for holidays not worked and shall exclude bonuses and other similar extraordinary benefits.
- 26.3 **COSTS NOT TO BE REIMBURSED**
- 26.3.01 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office.
- 26.3.02 Expenses of the Construction Manager's principal office and offices other than the Project site office.
- 26.3.03 Construction Manager's capital expenses, including interest on Construction Manager's capital used for the Work.
- 26.3.04 Any cost not specifically and expressly described in subsection 26.2 above.
- 26.3.05 Cost which would cause the GMP to be exceeded (other than adjustments pursuant to the terms herein for Change Orders and Construction Change Directives).
- 26.3.06 Cost of the Construction Manager's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, the Construction Manager should not plan to perform any such computer related services or alternatives at the field office when such service or functions can be performed at the Construction Manager's home or branch offices, or other outside service locations.
- 26.3.07 Any personal computer applications and related costs or remote job entry data functions and related costs which will be incurred by personnel at the job site must receive advance written approval from the Owner to be considered a reimbursable cost, otherwise the associated cost will not be paid.
- 26.3.08 Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project will only be reimbursed with prior written approval of the project manager.

- 26.3.09 Costs of subcontractors bonds not required by this agreement or approved in writing by Owner.
- 26.3.10 Deductibles paid by Construction Manager on any insurance claim will not be reimbursed unless the loss could not have been reasonably avoided by Construction Manager and/or all subcontractors had it reasonably performed all contractual safeguards. Deductibles will otherwise be reimbursed to CM.

ARTICLE 27. CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVES

- 27.1 The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project shall be authorized by Change Order (CO) or Construction Change Directive (CCD) signed by the Owner before the change is implemented.
- 27.2 A Change Order or Construction Change Directive is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fees, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project.
- 27.3 The increase or decrease in the cost of the work as a component of the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways.
- .a by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Owner;
 - .b by unit prices stated in the Agreement or subsequently agreed upon;
 - .c by cost as defined in Article 26 of the General Conditions, the stipulated percentage for overhead and profit [subject to the \$100,000 threshold set forth in Article 25.01.3 of the General Conditions] set forth in Article 7.1 of the Agreement and, if time for performance of the construction phase of the work is extended, additional construction phase fees and general conditions set forth in Article 25. 1.2 of the General Conditions; or
 - .d by the method provided in Subparagraph 27.4.
- 27.4 If none of the methods set forth in Clause 27.3, a, b, or c, is agreed upon, the Construction Manager, provided he receives a Construction Change Directive signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Construction Change Directive is issued under these conditions, the Project Consultant will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 27.3 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 26 of the General Conditions. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- 27.5 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order and/or Construction Change Directive that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
- 27.6 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by

the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 27 of the General Conditions.

- 27.7 Claims For Additional Construction costs or Time - All claims for additional costs or time shall be made by request for a change order submitted as provided in Article 27 of the General Conditions. **ADDITIONAL TIME SHALL BE CONSIDERED ONLY IF THE APPROVED CPM (CRITICAL PATH) IS IMPACTED BY THE CHANGE.**
- 27.7.01 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Project Consultant or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such time as the Owner may reasonably determine.
- 27.7.02 Only delays which are determined to extend the critical path for the schedule for constructing the project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.
- 27.8 Minor Changes In The Project - The Facilities Project Manager will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order.
- 27.9 Emergencies - In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 27 of the General Conditions.

ARTICLE 28. DISCOUNTS AND PENALTIES

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

ARTICLE 29. BONDS, INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

- 29.1 **Bonds**
- 29.1.01 In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the GMP as revised.
- 29.1.02 To be acceptable to the School Board of Broward County as Surety for Performance Bonds and Labor and

Material Payment Bonds, a Surety Company shall comply with the following provisions:

- 29.1.03 The Surety Company shall be approved by the United States Treasury Department and have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- 29.1.04 The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- 29.1.05 The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued
- 29.1.06 If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
- 29.1.07 The Surety Company shall have at the minimum an A- Policy Holder's Rating, and a Class VI Financial Rating in the latest issue of Best's Key Rating Guide.
- 29.1.08 The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
- 29.1.09 Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
- 29.1.10 In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

ARTICLE 30. INDEMNITY AND HOLD HARMLESS

- 30.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, its members, officers, employees and agents (hereinafter collectively "Related Parties") from and against any and all liability, claims, causes of action (by whomever brought or alleged and regardless of the legal theories upon which the liability, claims or causes of action are based), losses, damage, costs, expenses and fees (including but not limited to reasonable fees of attorneys, expert witnesses and other consultants), which are or may be imposed upon, incurred by or asserted against Owner and/or the Related Parties to the extent said liability, claims, causes of action, losses, damages, costs, expenses and/or fees are caused by the Construction Manager's negligent, reckless or intentional wrongful acts of omission, error, misconduct, or commission.
- 30.2 In any and all claims against the Owner by any employee of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, the obligations for Construction Manager to indemnify Owner under this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Manager under workman's compensation acts, disability acts, or other employee benefit acts.
- 30.3 In the event that any claims are brought or actions filed against the Owner with respect to the indemnity contained herein, the Construction Manager agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Construction Manager agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Construction Manager further agrees to pay, at the sole expense of the Construction Manager, the attorney's fees and cost incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. However, if the claims or actions are covered by insurance and such coverage is acknowledge by the insurance company in writing to the Owner, then, in that case, the insurance company shall choose counsel, direct the defense and be the judge of the acceptability of any compromise or settlement

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

- 30.4 The Construction Manager recognizes the nature of the indemnification obligations imposed under this contract and voluntarily makes these covenants. The obligation imposed upon the Construction Manager under this Indemnification Agreement shall survive termination of this contract.

ARTICLE 31. CONSTRUCTION MANAGER'S INSURANCE

- 31.1 The Construction Manager shall not commence any work in connection with this Agreement nor shall be paid any monies until it has obtained the following types of insurance and such insurance policies have been approved and supplied to the Owner, nor shall the Construction Manager allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida. All insurance companies providing policies required under this Agreement shall have at least an "A-" rating and a financial rating of no less than VI in the current A.M. Best Manual or hold a Moody's Investors Service Financial Strength of "Aa3" or better.

- 31.2 Insurance policies required under this Agreement shall be endorsed to be primary of all other valid and collectable coverages maintained by The School Board of Broward County, Florida. The School Board of Broward County, Florida, shall be named as an additional insured under the General Liability policy including Products Liability. **THE CONSTRUCTION MANAGER SHALL NOT RECEIVE ANY PAYMENTS UNDER THIS CONTRACT AS LONG AS AND UNTIL ALL POLICIES REQUIRED AT THAT TIME HAVE BEEN PROVIDED TO THE OWNER.**

- 31.3 Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

- 31.4 Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the Owner.

- 31.4.01 The Certificate shall be dated and show the name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.

- 31.4.02 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.

- 31.4.03 Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificates shall clearly state all of the coverages required in this Section. The Certificates shall clearly indicate that the Construction Manager has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to the Construction Manager.

- 31.4.04 Certificate of Insurance must clearly list any and all deductibles by coverage.

Insurance Required

- 31.5 Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontract similarly to provide Worker's Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law, Florida Statutes Chapter 440. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of

employees not otherwise protected.

- 31.6 Automobile Liability Insurance - The Construction Manager shall maintain Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in amounts not less than One Million (\$1,000,000.00) Dollars per occurrence for bodily injury and property damage combined single limit.
- 31.7 General Liability Insurance - The Construction Manager shall maintain General Liability Insurance, including contractual Liability to cover the Hold Harmless Agreement set forth herein, with bodily injury limits of not less than One Million (\$1,000,000.00) Dollars per occurrence combined single limit for bodily injury and property damage and not less then Two Million (\$2,000,000.00) Dollars General Aggregate.
- 31.8 Product Liability or Completed Operations Insurance: The Construction Manager shall maintain Product Liability of Completed Operations Insurance with bodily injury limits of liability of no less than One Million (\$1,000,000.00) Dollars per occurrence and One Million (\$1,000,000.00) Dollars aggregate.
- 31.9 Builder's Risk Coverage - The Construction Manager shall take out and maintain during the construction phase of this Agreement. A Builder's Risk Policy completed value form as a cost of the Project, issued to provide coverages on an all risk basis including but not limited to perils of fire, vandalism, theft and those included in extended coverage in the amount of one hundred percent (100%) of the values at risk. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

ARTICLE 32. WAIVER OF SUBROGATION

- 32.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 29 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 32.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 33. WITHHOLDING PAYMENT TO CONSTRUCTION MANAGER

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

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

ARTICLE 34. TERMINATION BY THE CONSTRUCTION MANAGER

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

ARTICLE 35. OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATIONS AND TERMINATION BY OWNER FOR CAUSE

- 35.1 If the Construction Manager fails to perform any of his obligations under this Agreement including any obligation he assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- 35.2 If the Construction Manager is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under this agreement. Reasonable terminal expenses incurred by the Owner may be deducted from any

payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

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

ARTICLE 36. TERMINATION BY OWNER WITHOUT CAUSE

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

ARTICLE 37. LAWS AND REGULATIONS

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

ARTICLE 38. DISPUTE RESOLUTION

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

ARTICLE 39. GOVERNING LAW AND VENUE

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

ARTICLE 40. RIGHTS AND REMEDIES

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

ARTICLE 41. SUCCESSORS, ASSIGNS AND ASSIGNMENT

- 41.1 The Owner and the Construction Manager each binds itself, its partners, successors, assigns and legal representatives to the other party in respect to all covenants, agreements and obligations contained in the Construction Contract. It is agreed that the Construction Manager shall not assign, transfer, convey or otherwise dispose of the contract or its right, title and interest in and to the same or any part thereof, without previous consent of the Owner and concurred to by the Sureties.
- 41.2 If requested by Owner the Construction Manager agrees to assign all Subcontracts required for performance of this Contract to the Owner upon the Owner or Facilities Project Manager's determination that Construction Manager has defaulted under the Contract Documents. The Construction Manager shall include in all Subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier, in the event of Construction Manager's default under this Contract, to consent to the assignment of their subcontracts to the Owner.

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

- 42.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
- .a All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - .b The Construction Manager must submit a Notice of Claim to Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
 - .c Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
 - .d The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this Article.
- 42.2 After receipt of a Request for Change Order, the Owner, within a reasonable time, shall deliver to the Construction Manager its written determination of the claim.
- 42.3 The venue for all civil actions against the Owner shall be in Broward County, Florida.
- 42.4 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 25, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Project Consultant, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 42.01 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes as set forth in Articles 25 and 27. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.
- 42.5 In the event it shall be determined by a Court of competent jurisdiction that the preceding provision are inapplicable or unenforceable for any reason or cause, then the Construction Manager shall be entitled to the sum of \$200 per day for each day it is actually delayed by the action of or neglect of the Owner or Project Consultant or by changes in the Work, or by any other cause of delay which is attributable to the Owner or Construction Manager and beyond the Construction Manager's control, avoidance or mitigation and without the fault or negligence of the Construction Manager and/or Subcontractor or supplier at any tier. This provision

contemplates anticipated and actual loss caused by any delay and the difficulty in proving the loss. The sum set forth above, on a per diem basis, is the total amount recoverable from the Board as full and final compensation for all delay damages, consequential damages, loss of profits and/or the like. Article 42.05 compensation, if triggered as set forth in Article 42.05 of the General Conditions to the Construction Manager Agreement, are in addition to any monies due pursuant to Article 25.01(2) of the General Conditions.

ARTICLE 43. ROYALTIES AND PATENTS.

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

ARTICLE 44. RIGHT TO AUDIT PROVISIONS

- 44.1 Construction Manager's records which shall include but not be limited to accounting records, payroll time sheets, cancelled payroll checks, W-2's, 1099's, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), originals estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this contract (all 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 invoices, payments or claims submitted by the Construction Manager or any of his payees pursuant to the execution of the contract. 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) as they may apply to costs associated with this contract.
- 44.2 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 contract, for the duration of the Work, and until 5 years after the date of final payment by Owner to Consultant pursuant to this contract.
- 44.3 Owner's agent or its authorized representative shall have access to the Construction Manager'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.

- 44.4 Construction Manager shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payees' costs from amounts payable to the Construction Manager pursuant to this contract.
- 44.5 If an audit inspection or examination in accordance with this Article, discloses overcharges (except negotiated fees) by the Construction Manager 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 Construction Manager. If the audit discloses contract billing or charges to which Construction Manager is not contractually entitled Construction Manager 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.

ARTICLE 45. MISCELLANEOUS

- 45.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section, 218.74(4) Florida Statutes (1998) as amended.
- 45.2 Harmony - Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the project shall work in harmony with and be compatible with all other labor being used by Construction Manager now or hereafter on the site of the project. Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.
- 45.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 45.4 Invoices - Invoices shall be submitted in detail sufficient for a proper preaudit and postaudit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.
- 45.5 Construction Manager's Project Records - The Construction Manager's Project Records shall be maintained as prescribed herein above in accordance with the State of Florida General Records Schedule for State Agencies A-I and shall be made available to the Owner or his authorized representative at mutually convenient times.
- 45.6 Public Entity Crime Information Statement - A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 45.7 Electronic Mail Capabilities - The Construction Manager must have electronic mail capabilities through the World Wide Web. It is the intention of the School Board of Broward County to use electronic communication for all projects whenever possible. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.

45.8 Trench Safety Act - The Construction Manager must comply with the provisions of the Trench Safety Act (Florida Statutes Section 553.66, as amended).

EXHIBIT A
CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner

Superintendent of Schools
Deputy Superintendent for Facilities and Construction Management

Project Manager

Project Consultant

Project Principal
Project Manager
Site Representative
Mechanical Engineering Inspector
Electrical Engineering Inspector
Structural Engineering Inspector
Architectural Inspector

Construction Manager

((Off Site 1)) ((Title 1))
((Off Site 2)) ((Title 2))
((Off Site3)) ((Title 3))
((OffSite4)) ((Title 4))
((OffSite5)) ((Title 5))
((OffSite6)) ((Title 6))
((Onsite 1)) ((Title 1))
((OnSite2)) ((Title 2))
((OnSite3)) ((Title 3))
((On S ite5)) ((Title 5))

EXHIBIT B

OWNER'S CONSTRUCTION BUDGET

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
COST OF WORK	((ConstrBudaetBal))
CONSTRUCTION MANAGER'S PRE-DESIGN PHASE FEE	((PreDesignPhaseFee))
CONSTRUCTION MANAGER'S DESIGN PHASE FEE	((DesignPhaseFee))
CONSTRUCTION MANAGER'S BIDDING & AWARD PHASE FEE	((ConB&APhaseFee))
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE	((ConPhaseFee))
CONSTRUCTION MANAGER'S WARRANTY PHASE FEE	((Oamt))
CONSTRUCTION MANAGER'S OVERHEAD	((Wamt))
CONSTRUCTION MANAGER'S PROFIT	((Pamt))
CONSTRUCTION MANAGER'S GENERAL CONDITIONS	((ConPhaseFee))
CONSTRUCTION MANAGER'S TOTAL FEES	((ConPhaseFee))
OWNER'S TOTAL CONSTRUCTION BUDGET (FLCC)	((ConstrBudget))

EXHIBIT C

CONSTRUCTION MANAGERS PERSONNEL

OFF-SITE SUPPORT STAFF

<u>Individual</u>	<u>Title</u>
((OffSite 1+	((Title 1))
((OffSite2+	((Title2))
((OffS ite3+	((Title3))
((OffSite4>	((Title4))
((OffS ite5+	((Title5))
((OffS ite6+	((Title6))

ON-SITE SUPPORT STAFF

<u>Individual</u>	<u>Title</u>
((ONSITE 1))	((Title1 1))
((OnSite2))	((Title2))
((OnSite3))	((Title3))
((OnSite4))	((Title4))
((OnS ite5))	((Title5))

((TO Be Assigned))

EXHIBIT D

**CONSTRUCTION MANAGERS PERSONNEL TO BE
ASSIGNED DURING PRECONSTRUCTION PHASE**

<u>Individual</u>	<u>Title</u>	<u>In Months</u>	<u>Available</u>
((offsite)) ((title 1))			
((offsite)) ((title2))			
((offsite3)) ((title3))			
((offsite4)) ((title4))			
((onsite 1)) ((title 11))			
((onsite2)) ((title2))			
((onsite3)) ((title3))			
((onsite4)) ((title4))			
((onsite5)) ((title5))			

((To Be Assigned))

EXHIBIT E

CONSTRUCTION MANAGERS PERSONNEL TO BE

ASSIGNED DURING CONSTRUCTION OFF-SITE

<u>Individual</u>	<u>Title</u>	<u>In Months</u>	<u>Available</u>
((offsite))	((title 1))		
((offsite))	((title2))		
((offsite3))	((title3))		
((offsite4))	((title4))		
((onsite 1))	((title 11))		
((onsite2))	((title2))		
((onsite3))	((title3))		
((onsite4))	((title4))		
((onsite5))	((title5))		

((To Be Assigned))

EXHIBIT F

**CONSTRUCTION MANAGERS PERSONNEL TO BE
ASSIGNED DURING CONSTRUCTION ON-SITE**

<u>Individual</u>	<u>Title</u>	<u>In Months</u>	<u>Available</u>
((offsite)) ((title 1))			
((offsite)) ((title2))			
((offsite3)) ((title3))			
((offsite4)) ((title4))			
((onsite 1)) ((title 11))			
((onsite2)) ((title2))			
((onsite3)) ((title3))			
((onsite4)) ((title4))			
((onsite5)) ((title5))			

((To Be Assigned))