

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

**AGREEMENT BETWEEN OWNER AND TOTAL PROGRAM MANAGER
GENERAL CONDITIONS OF THE TPM CONTRACT**

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>DOCUMENT TITLE</u>
1.01	RECITALS
2.01	BASIC SERVICES
2.02	SCHEDULE
2.03	STANDARD OF CARE
2.04	PENALTY FOR NON-CONFORMING DESIGN DOCUMENTS
2.05	APPROVAL OF DOCUMENTS
2.06	SBBC RESPONSIBILITIES
2.07	PAYMENT FOR BASIC SERVICE AND CONSTRUCTION
2.08	CONTRACT BONDS
2.09	SOLICITATION OF BIDS
2.10	TIME FOR COMPLETION AND LIQUIDATED DAMAGES
2.11	GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION
2.12	TOTAL PROGRAM MANAGER'S INSURANCE
2.13	REUSE OF DESIGN DOCUMENTS
2.14	INDEMNIFICATION
3.01	NO WAIVER OF SOVEREIGN IMMUNITY
3.02	NO THIRD PARTY BENEFICIARIES
3.03	NON-DISCRIMINATION
3.04	TERMINATION
3.05	RECORDS
3.06	ENTIRE AGREEMENT
3.07	AMENDMENTS
3.08	PREPARATION OF AGREEMENT
3.09	WAIVER
3.10	COMPLIANCE WITH LAWS
3.11	GOVERNING LAW
3.12	BINDING EFFECT
3.13	ASSIGNMENT
3.14	FORCE MAJEURE
3.15	PLACE OF PERFORMANCE
3.16	SEVERABILITY
3.17	NOTICE
3.18	CAPTIONS
3.19	EXCESS FUNDS
3.20	AUTHORITY
3.21	BACKGROUND SCREENING

GENERAL CONDITIONS

TABLE OF CONTENTS

ARTICLE

1. **DEFINITIONS**
2. **COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS**
3. **INTENT AND INTERPRETATION**
4. **OWNERSHIP OF THE CONTRACT DOCUMENTS WHICH MAKE UP THE CONTRACT**
5. **TEMPORARY UTILITIES**
 - 5.01 Water for Building Work
 - 5.02 Electrical Energy
 - 5.03 Temporary Sanitary Facilities and Sewers
6. **OWNER OCCUPANCY**
7. **JOB-SITE FACILITIES**
8. **TOTAL PROGRAM MANAGER*S STAFF**
9. **LINES OF AUTHORITY**
10. **SCHEDULE AND PROJECT MANUAL PROVISIONS**
11. **QUALITY CONTROL**
12. **LICENSE AND PERMITS**
13. **JOB SITE REQUIREMENTS**
14. **RESPONSIBILITY FOR WORK SECURITY**
15. **SAFETY PROTECTION OF WORK AND PROPERTY**
16. **MATERIALS**
17. **WORKFORCE COMPOSITION**
18. **INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP**
19. **ADMINISTRATIVE RECORDS**
20. **OWNER’S RESPONSIBILITIES**
21. **ADMINISTRATION OF THE CONTRACT**
22. **INSPECTION**
23. **DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK**
24. **SUBCONTRACTS**

- 25. TOTAL PROGRAM MANAGER'S FEES
- 26. COST OF THE PROJECT
- 27. CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVES
- 28. DISCOUNTS AND PENALTIES
- 29. BONDS AND INSURANCE
- 30. INDEMNITY AND HOLD HARMLESS
- 31. TOTAL PROGRAM MANAGER'S INSURANCE
- 32. WAIVER OF SUBROGATION
- 33. WITHOLDING PAYMENT TO TOTAL PROGRAM MANAGER
- 34. TERMINATION BY THE TOTAL PROGRAM MANAGER
- 35. OWNER'S RIGHT TO PERFORM TOTAL PROGRAM MANAGER'S OBLIGATIONS AND TERMINATION BY OWNER FOR CAUSE
- 36. TERMINATION BY OWNER WITHOUT CAUSE
- 37. LAWS AND REGULATIONS
- 38. DISPUTE RESOLUTION
- 39. GOVERNING LAW
- 40. RIGHTS AND REMEDIES
- 41. SUCCESSORS, ASSIGNS AND ASSIGNMENT
- 42. NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY
- 43. ROYALTIES AND PATENTS
- 44. RIGHT TO AUDIT PROVISIONS
- 45. MISCELLANEOUS
- EXHIBIT A CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES
- EXHIBIT B OWNER'S CONSTRUCTION BUDGET
- EXHIBIT C TOTAL PROGRAM MANAGERS PERSONNEL
- EXHIBIT D TOTAL PROGRAM MANAGERS PERSONNEL TO BE ASSIGNED DURING PRECONSTRUCTION PHASE
- EXHIBIT E TOTAL PROGRAM MANAGERS PERSONNEL TO BE ASSIGNED DURING CONSTRUCTION OFF-SITE
- EXHIBIT F TOTAL PROGRAM MANAGERS PERSONNEL TO BE ASSIGNED DURING CONSTRUCTION ON-SITE
- EXHIBIT G TOTAL PROGRAM MANAGERS DOCUMENT REVIEW PROCEDURES
- EXHIBIT H TOTAL PROGRAM MANAGERS DOCUMENT REVIEW FORM

EXHIBIT I **WARRANTY DEFECT RESPONSE REQUEST**

EXHIBIT J **FORM OF ADDENDUM TO AGREEMENT BETWEEN OWNER AND
TOTAL PROGRAM MANAGER (4 PAGES)**

EXHIBIT K **COMPOSITE EXHIBIT OF DOCUMENTS AS FOLLOWS:**
DOCUMENT 00435: SCHEDULE OF VALUES (8 PAGES)
DOCUMENT 00550: NOTICE TO PROCEED (2 PAGES)
DOCUMENT 00600: PERFORMANCE BOND FORM
DOCUMENT 00610: PAYMENT BOND FORM
DOCUMENT 01250H: CONTINGENCY USE DIRECTIVE (1 PAGE)
DOCUMENT 01290A: APPLICATION FOR PAYMENT (2 PAGES)
DOCUMENT 00455 – BACKGROUND SCREENING
SECTION 01295: DIRECT OWNER PURCHASING PROGRAM (5 PAGES)
01295A ORDER FORM
01295B VENDOR REQUEST FORM
01295C INVOICE SUMMARY
RIDER TO PERFORMANCE BOND FORM
RIDER TO PAYMENT BOND FORM
PROJECT SCHEDULE
PROJECT SCOPE
DOCUMENT 00620: SUBCONTRACTOR PERFORMANCE BOND
DOCUMENT 00625: SUBCONTRACTOR PAYMENT BOND
IRS FORM W-9
TRUTH IN NEGOTIATIONS CERTIFICATION

Rev. February 26, 2008

**AGREEMENT
FOR
TOTAL PROGRAM MANAGEMENT**

THIS AGREEMENT is made and entered into as of this ___ day of _____, 2007, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

firm

(hereinafter referred to as "Total Program Manager"),
whose principal place of business is

address

WHEREAS, SBBC desires to procure educational facilities including classrooms and related spaces at various locations; and

WHEREAS, SBBC is in need of professional management, architectural/engineering design services, and construction services for the procurement and construction of classrooms and related spaces; and

WHEREAS, SBBC has determined that Total Program Management Services as described in the State Requirements for Educational Facilities is the most expedient and suitable delivery method under the circumstances; and

WHEREAS, _____ is a professional firm qualified to furnish total program management services including architectural/engineering design and construction for the procurement of educational facilities including classrooms and related spaces at various locations.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Basic Services.** Provide complete professional program management; architectural, engineering and/or other professional design services; and construction services; as set forth in the Florida Statutes, Florida Building Code, State Requirements for Educational Facilities, SBBC Design Criteria, and Exhibit 1 – Scope of Services; and all necessary personnel, equipment and materials to perform such services.

The services of the Total 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 Total Program 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.

Total Program Manager shall furnish the services of soil engineers or other consultants if such services are necessary and required by applicable codes, standards, or law. Such services may include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, tests for hazardous materials, chemical, mechanical, structural or other tests with reports and appropriate professional recommendations.

2.02 **Schedule.** Prior to commencement of the Construction Phase, the Owner shall issue to the Total Program 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 Total Project Manager agrees to complete the construction in accordance with the agreed upon substantial completion date and final completion date.

2.03 **Standard of Care.** The SBBC's engagement of the Total Program Manager is based upon the Total Program Manager's representations to the SBBC that: it is an organization of experienced management, design, and construction professionals, registered and licensed to do business in Florida; it is either qualified, willing and able to perform architect/engineer of record

[deliverable through a sub consultant] and general contractor of record services [deliverable through a subcontractor] for the Program; and that it has the past experience and ability to provide design and engineering services for Programs of similar size and scope which will meet the SBBC's objectives and requirements.

As to all services provided pursuant to this Agreement, the Total Program Manager shall furnish services by experienced personnel and under the supervision of experienced professionals licensed in South Florida, and shall exercise a degree of care and diligence in the performance of these services in accordance with the customary professional standards currently practiced by firms in Florida and in compliance with any and all applicable codes, laws, ordinances and/or regulations. The Total Program Manager shall utilize the same personnel over the course of the Work and shall, if requested by the SBBC, replace personnel whom the SBBC has found to be incompetent or to whom the SBBC otherwise reasonably objects.

All professional design services and associated products or instruments of those services provided by the Total Program Manager shall be in accordance with all applicable codes, laws and regulations of each governmental entity including, but not limited to, Florida State Board of Education Regulations, Chapter 6A-2.0111 (Educational Facilities), Florida Building Code (FBC), Fire Prevention Code, (FPC) Americans With Disabilities Act (ADA), in effect at the time of execution of this Agreement, and its referenced codes and standards; SBBC Design Criteria and Design and Material Standards (these documents may be found at this website http://www.broward.k12.fl.us/facilities_construction/Design_Standards/SubmittalDocuments.asp); Crime Prevention Through Environmental Design (CPTED) (Broward Sheriff's Office), and all guidelines and regulations of the SBBC (provided same are not less stringent than applicable codes) with the SBBC serving as the interpreter of the intent and meaning of SREF, FBC or any other applicable code.

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.

The Total Program Manager further represents that 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 its soil test borings; and the location of electric and utility lines and water, sanitary, sewer and storm drain lines. The Total Program Manager has provided and reviewed the site geotechnical report and will respond as required by law.

2.04 **Penalty for Non-Conforming Design Documents.** Should the Total Program Manager submit drawings, plans, specifications or other documents or materials for review as required herein that are deemed unacceptable as defined by the terms "Revise and Resubmit" by the plan review authority (Building Department, Design Services Department, Peer Plan Review Consultant) the costs as determined by the SBBC, for subsequent reviews after

the second submittal for that Phase shall be borne by the Total Program Manager and the SBBC will deduct such costs from the Total Program Manager's Basic Services Fee.

2.05 **Approval of Documents:** In order to expedite the design process documents for the proposed building units should be submitted to the SBBC Design Services Department at the earliest time possible for design and site location review and approval. Complete Phase III 100% Construction Documents for each location must be submitted to the Building Department for review and issuance of a building permit.

SBBC's approval of or comments on any of the documents submitted to SBBC by Total Program Manager shall not be deemed the approval of or by an other governmental authority having jurisdiction over the Program and Total Program Manager acknowledges that the aforesaid authorities may require modifications of any of the documents submitted by Total Program Manager. Such modifications shall be made at no cost to SBBC.

The Total Program Manager shall, with the SBBC's assistance, file the required documents for approval by governmental authorities having jurisdiction over the Program (including Broward County and municipalities and their constituent departments, the South Florida Water Management District, and other state, local or federal agency with jurisdictional authority over some aspect of the Program) and obtain certifications of "permit approval" by reviewing authorities prior to the commencement of construction and early enough to ensure that the program is not delayed by permit processing by Broward County, a municipality or other jurisdictional agency. The Total Program Manager shall not be liable for delays in obtaining permits that are not directly attributable to the Total Program Manager. The Total Program Manager shall provide the original documents or reproducible copies as may be required for submittal to any and all governmental authorities. The Total Program Manager shall attend and provide representation at all review meetings, workshops, hearings and Commission/Council meetings concerning the Program as conducted by other jurisdictional agencies. Total Program Manager shall assure the SBBC that all mandatory requirements are complete prior to bidding, included, but not limited to, those that may have a financial impact on the Program.

2.06 **SBBC Responsibilities.** The SBBC shall furnish a legal description, as-built site drawings and a certified land survey of the site. When possible, the SBBC shall supply the certified land survey in hardcopy and electronic media formats. The certified land survey shall provide boundary dimensions, locations of existing structures and/or trees, the grade and line of street, pavement and adjoining properties, the rights, restrictions, easements, boundaries, topographic data and information relative to sewer, water, gas and electrical services. SBBC shall furnish a Construction Budget which is the portion of the Project Budget allocated for the construction cost of a project in the program.

The SBBC will assign a team consisting of project management staff and professional consultants that will serve in the capacity of the District's Program Manager to provide oversight of the program, logistical support, existing site information, interface with other District departments, and facilitate the TPM activities.

2.07 **Payment For Basic Service and Construction.** Payments for Basic Services may be requested monthly in proportion to services performed during each Phase of the Work and provision of all required insurance policies is a condition precedent to becoming due any such payments to the Total Program Manager. Said payments shall, in the aggregate, not exceed the total Basic Compensation indicated below for each Phase.

Pre-design	\$ _____
Design	\$ _____ *
Bidding and Award	\$ _____ *
Construction Phase Fee	\$ _____ *
Warranty	\$ _____ *
Overhead	\$ _____
Profit	\$ _____
General Conditions	\$ _____ **
 Total Fee	 \$ _____
 Fee for Change-Orders	 _____ % (Total Program Manager's Overhead/Profit) <u>(Applicable to Cost of Work in Article 26 of the General</u> <u>Conditions only)</u>

* Breakout Fees - For application in the event of Reuse of the Design Documents and related services as per Article 2.13 of this Agreement.

Fees for professional Architectural/Engineering Services included in Pre-Design, Design, Bidding and Award above \$ _____

Fees for professional Architectural/Engineering Services included in Construction and Warranty Phase Fees above \$ _____

In the event of a reuse the terms and conditions in the SBBC Standard Professional Services Agreement for Architectural/Engineering Services as amended from time to time and in effect at the time of contract will govern.

** General Conditions include items of Labor, Materials, and Services set forth in General Conditions Article 25.02.01(l), excluding the cost of Builder's Risk Insurance.

Pre-Design and Design Phase - In the case where pre-design and design fee are agreed upon and the Total Program Manager's GMP is not accepted by the SBBC and the Agreement is terminated, the Total Program 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 Total Program Manager may request payment for that part of the Contract Price allocable to Contract requirements properly provided during the pre-design and design phase

The overhead and profit and general conditions expenses shall be paid proportionally to the ratio of the cost of the Work in place.

During the Pre-Design, Design, and Bidding and Award Phases the Total Program 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 including a record of hours worked indicating the date and specific activities performed. Such information shall be certified and included in a monthly report submitted with the Total Program Manager's invoice.

The Bidding and Award Phase fee shall be payable upon presentation of the Guaranteed Maximum Price (GMP) to SBBC by the Total Program Manager.

Construction Phase Fee and Payments - The Total Program 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 SBBC. During Construction, on or before the **15th** day of each month after commencement of performance, but no more frequently than once monthly, the Total Program 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 Total Program Manager and SBBC. 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 SBBC. 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 for that time period until the contract is fifty percent (50%) complete, except when approved by the SBBC certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. Retainage shall be withheld on all invoices, except fees, (to 100% completion) and may be released upon 100% completion of the project. At Substantial Completion of all of the work or an SBBC-Approved Phase of the Work, the SBBC may approve a reduction of the retainage from 10% to 5% at its discretion. Retainage shall not be withheld on fees. Multiple Schedules of Values, payments, and release of retainage shall be acceptable on a "per site" basis, also referred to as a "project".

Final payment constituting the unpaid balance of the Cost of Work and the Total Program Manager's fee, shall be due and payable as described in this Article after the SBBC has accepted occupancy of the project, provided that the Project be then finally completed, that the Total Program Manager has verified by his 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 Total Program Manager and the Total Program Manager shall list those items prior to receiving final payment and the SBBC may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of the Total Program 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, SBBC shall pay to Total Program Manager, monthly, the amount retained for each incomplete item after each of said items is completed.

If the Owner should fail to pay the Total Program Manager within 30 days after the receipt of an approvable payment request from the Total Program Manager, then the Total Program Manager may, upon twenty-one (21) additional days written notice to the Owner stop the Project until payment of the amount owing has been received.

To the extent that any portion of Article 2.07 of this Agreement is inconsistent with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act, Section 218.70 shall govern.

2.08 **Contract Bonds.** 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 SBBC 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 in Exhibit J. 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. The form of Bonds required is included elsewhere in the Contract Documents. This is in addition to any bonds of subcontractors or others as required herein.

2.09 **Solicitation of Bids:** The Total Program Manager shall comply fully with SREF, as amended, including but not limited to preparation and issuance of bid packages, opening and evaluation of bids from at least two bidders for each trade package, and provide recommendations to the SBBC. (SREF 1999 4.1(6)(B)(f)3.c) The Total Program Manager shall also comply with School Board Policy 7004 such that an advertisement is placed in at least two local newspapers (Sentinel and Herald) and one of the designated SBBC staff in Policy 7004 and two additional SBBC staff are present at the public bid opening. The requirement for two bids does not apply in the case of sole source manufactured buildings as set forth in the Total Program Manager's response to the RFP.

2.10 **Time for Completion and Liquidated Damages.**

Prior to commencement of the Construction Phase, the SBBC shall direct and issue to the Total Program Manager, in writing, a Notice to Proceed into the Construction Phase. A project substantial completion date, a project final completion date and an SBBC Occupancy date for completion of the project in accordance with the master project schedule, shall be established by the SBBC. The Total Program Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and SBBC Occupancy date. The Total Program Manager shall pay the SBBC the sum of _____ (\$_____) per day, , for each and every calendar day of unexcused delay in achieving Substantial Completion beyond ____ consecutive calendar days from ATP for Design Phase.

If the Total Program Manager fails to achieve final completion within ____ days of the date of Substantial Completion, Total Program Manager shall pay SBBC the sum of _____ dollars (\$_____) per day, per classroom for each and every calendar day of unexcused delay in achieving final completion.

Any sums due and payable hereunder by the Total Program 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 SBBC, estimated at or before the time of executing this Contract. When the SBBC reasonably believes that final completion will be inexcusably delayed, the SBBC shall be entitled, but not required, to withhold from any amounts otherwise due the Total Program Manager an amount then believed by the SBBC to be adequate to recover liquidated damages applicable to such delays. If and when in the Owner's discretion the Total Program 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 Total Program Manager those funds withheld, but no longer applicable, as liquidated damages.

2.11 **Guaranteed Maximum Price for Construction.** The Total Program Manager shall submit a written Guaranteed Maximum Price (GMP) for Construction to the SBBC when the Total Program Manager has received bids for the construction Work under this agreement. A Notice to Proceed for Construction will be issued upon SBBC approval of the GMP and when Construction Documents are complete as determined by the Facilities and Construction Management Division staff having issued either "approved" status, and, issuance of a Building Permit by the Chief Building Official. This indicates that all mandatories have been met (defined as Building Department code requirements.) When design review "approval" is withheld, the documents must be resubmitted. The GMP shall guarantee the maximum price for the construction cost of work(s) or designated part thereof for each individual project in the program and shall be approved only by the SBBC. Such Guaranteed Maximum Price will be subject to modification for changes in the project(s) as provided in Article 27 of the general conditions except that the Total Program Manager's Overhead/Profit shall be as set forth herein. However, the actual price paid for the Work by the SBBC 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 Total Program Manager's fees or the GMP, **whichever is less when the Work is complete. SBBC SHALL NOT BE LIABLE FOR NOR SHALL IT PAY TOTAL PROGRAM MANAGER ANY SUMS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE. TOTAL PROGRAM MANAGER AGREES THAT ANY AND ALL SAVINGS BELONG AND/OR REVERT BACK TO THE SBBC.**

A. The GMP will only include those taxes in the cost of the work which are legally enacted at the time the GMP is established.

B. At the time of submission of a Guaranteed Maximum Price, the Total Program Manager will verify the time schedule for activities and work which were approved by the Owner and used to determine the Total Program 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 Total Program Manager and Owner and/or unforeseen circumstances. The Total Program Manager shall submit the GMP Addendum on the Owner's approved form for approval by The School Board of Broward County, Florida.

C. SBBC will issue a single GMP Addendum for the Total Program.

D. IF THE GMP PROPOSAL IS UNACCEPTABLE TO THE OWNER, OWNER MAY TERMINATE THE TOTAL PROGRAM MANAGER AS SET FORTH IN ARTICLE 36 OF THE GENERAL CONDITIONS.

E. The Total Program Manager may proceed to purchase [cost of buildings only] factory fabricated buildings [off site] prior to the Final GMP approval for the project(s) if the costs of the buildings are within the Owner approved construction budget(s) and the Deputy Superintendent, Facilities and Construction Management approves in writing.

F. 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.

G. Total Program Manager shall submit a GMP Manual with the proposed GMP Addendum which shall include at a minimum the following:

- 1) Transmittal Letter
- 2) Summary of GMP
- 3) List of Construction Documents
- 4) CPM Schedule
- 5) Schedule of Values

H. For all documents submitted pursuant to this section, the Total Program Manager shall submit five bound submittals consisting of the original documents plus four copies. One copy shall be distributed to the project consultant, one to the project manager and the remaining copies to the Contracts Department of the Owner.

2.12 Total Program Manager's Insurance.

General Insurance Requirements

The Total Program Manager shall not commence any work under this Agreement nor shall be paid any monies until the Total Program Manager has obtained all insurance required hereunder and such insurance policies have been approved and supplied to the SBBC.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and provision of all required insurance policies is a condition precedent to any payments becoming due to the Total Program Manager. 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.

Insurance policies required under this Agreement shall be endorsed to be primary of all other valid and collectible 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 and shall include the SBBC's project number and full project title (including applicable facility name) on the Certificate. THE TOTAL PROGRAM MANAGER SHALL NOT RECEIVE ANY PAYMENTS UNDER THIS CONTRACT AS LONG AS AND UNTIL ALL INSURANCE POLICIES REQUIRED AT THAT TIME HAVE BEEN PROVIDED TO THE OWNER.

The Total Program Manager shall furnish certificates of insurance to the SBBC for review and approval at the time of execution of this Contract and shall maintain same at all times during the term of this Agreement.

The Certificates shall clearly indicate that the Total Program 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 Total Program Manager. No material change or cancellation of the insurance shall be effective without a thirty (30) day prior written notice to and approval by the SBBC.

Providing for all sums which the Total Program Manager shall be legally obligated to pay as damages for claims arising out of or relating to the services performed by the Total Program Manager or any person employed or acting on the Total Program Manager behalf (including but not limited to Sub-Contractors) in connection with this agreement. If Owner, at its sole discretion, agrees that such coverage is not commercially reasonably available, the Owner may, at its sole discretion, authorize the Total Program Manager to alter the coverage by substituting a lower aggregate and/or changing any other terms and conditions of the coverage (including but not limited to deductible amounts) based upon the scope of the project.

In the event that extended Professional Liability or other insurance coverage is required by the Contract, no additional fees or costs will be added.

Insurance Required

Automobile Liability Insurance: The Total Program 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) Dollars per occurrence for bodily injury and property damage combined single limit.

General Liability Insurance: The Total Program 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) Dollars per occurrence combined single limit for bodily injury and property damage and not less than the Two Million (\$2,000,000) General Aggregate.

Product Liability or Completed Operations Insurance: The Total Program 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.

Builder's Risk Coverage - The Total Program Manager shall take out and maintain during the life of its Agreement a Builder's Risk Policy completed value form as a cost of work, 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.

Workers' Compensation Insurance: The Total Program Manager shall maintain Workers' Compensation Insurance in compliance with Florida Statutes, Chapter 440.

Professional Liability (Errors and Omissions): The Total Program Manager's Architect shall procure Professional Liability Insurance in the manner described herein. The deductible shall not be more than Fifty Thousand (\$50,000) Dollars for each policy and must be indicated on the certificate of insurance. The insurance policy shall be non-cancelable and the limits of the Professional Liability Insurance Policy shall be as follows:

Projects require a practice policy with a per claim/annual aggregate in accordance with the specifications delineated below relative to the cumulative construction value of all projects:

One Million (\$1,000,000) Dollars on a per claim/One Million (\$1,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is less than Five Million (\$5,000,000) Dollars.

One Million (\$1,000,000) Dollars on a per claim/Three Million (\$3,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is between Five Million One (\$5,000,001) Dollars to Ten Million (\$10,000,000) Dollars.

One Million (\$1,000,000) Dollars on a per claim/Five Million (\$5,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is greater than Ten Million One (\$10,000,001) Dollars.

The Project Consultant shall be required to maintain the practice policy in accordance with the above specifications for a period commencing with execution of this contract and terminating three years after final completion of said projects. In addition, the project consultant shall provide information regarding the total claims against said practice policy on an annual basis for the term of the contract upon and terminating three years after final completion of the project (Claims/Loss history should be forwarded to the Risk Management Department), as The School Board of Broward County, Florida, deems appropriate.

The Professional Liability insurance must provide for all sums which the Project Consultant shall be legally obligated to pay as damages for claims arising out of or relating to the negligent services performed by the Project Consultant or any person employed or acting on the

Project Consultant's behalf (including, but not limited to, Sub-Consultants) in connection with this Agreement. If the Owner, at its sole discretion, agrees that such coverage is not commercially reasonably available, the Owner may, at its discretion, authorize the Project Consultant to alter the coverage by substituting a lower aggregate or changing any other terms and conditions of the coverage (including but not limited to deductible amounts) based upon the scope of the project.

The Total Program Manager shall provide the Risk Management Department with evidence that the Total Program Manager's Architect has procured Professional Liability insurance in the manner described above prior to the Total Program Manager's commissioning.

2.13 **Reuse of Design Documents.** It is understood that this agreement includes this provision for the Owner's optional re-use of drawings, specifications and other documents. If the Owner elects to re-use the drawings, specifications and other documents, in whole or in part, prepared for the program and/or individual projects for other projects on the subject or other sites, contingent upon acceptance by the Total Program Manager or its Architectural/Engineering consultant, the Total Program Manager or its Architectural/Engineering consultant will be paid a re-use fee, for Basic Services, pursuant to Section 287.055 (F.S. 2002) as amended:

Twenty (20%) percent of the original fee for Basic Services for Pre-Design, Design and Bidding and Award

Thirty-eight (38%) percent of the original fee for Construction and Warranty.

The scope of the reuse shall include only those fees for professional A/E services for design and contract administration during construction, as set forth in Article 2.07 of the Agreement according to the standard SBBC Professional Services Agreement as amended from time to time and existing at the time of the reuse of the design documents.

For each re-use the Project Consultant shall review the final as-built design of any prior reuse or reuses and shall include all Basic Services rendered under the reuse(s) and incorporate all modifications to the drawings, specifications and other documents resulting from Change-Orders, Code revisions and Code corrections made during the prior reuse(s), and, modifications normally required to suit the new site (does not include preparation of reverse plans, changes to the program, subsequent code revisions or exceptional site conditions). The stipulations and conditions of this Agreement shall remain in force for each re-use project, unless otherwise agreed. Reuse fees do not include preparation of documents for offsite improvements.

If a reuse project commences in excess of three years from the acceptance of the design development documents by the Owner then Owner shall negotiate the fees to be paid to Project Consultant.

2.14 **Indemnification.**

A. To the fullest extent permitted by law, the Total Program Manager shall indemnify and hold harmless the SBBC, 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 SBBC 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 Total Program Manager's negligent, reckless or intentional wrongful acts of omission, error, misconduct, or commission.

B. In any and all claims against the SBBC by any employee of the Total Program Manager, or anyone for whose acts the Total Program Manager may be liable, the obligations for Total Program Manager to indemnify SBBC 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 Total Program Manager under workman's compensation acts, disability acts, or other employee benefit acts.

C. In the event that any claims are brought or actions filed against the SBBC with respect to the indemnity contained herein, the Total Program 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 Total Program Manager agrees that the SBBC may select the attorneys to appear and defend such claims or actions on behalf of the SBBC. The Total Program Manager further agrees to pay, at the sole expense of the Total Program Manager, the attorney's fees and cost incurred by those attorneys selected by the SBBC to appear and defend such claims or actions on behalf of the SBBC. However, if the claims or actions are covered by insurance and such coverage is acknowledged by the insurance company in writing to the SBBC, 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 SBBC 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 SBBC 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 SBBC.

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

ARTICLE 3 – MISCELLANEOUS TERMS

3.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Non-Discrimination.** The School Board of Broward County, Florida prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion or sexual orientation.

3.04 **Termination.** See attached general conditions.

3.05 **Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, as amended, and any resultant award of attorney's fees of non-compliance with that law.

3.06 **Entire Agreement.** This Agreement between the Owner and the Total Program Manager supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the Work to be included in the Guaranteed Maximum Price (GMP) is completed pursuant to Article 2.11, an Addendum to the Agreement shall be signed by the Owner and Total Program 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 2.11, they shall be identified in the Notice to Proceed issued by the Owner's Project Manager. To expedite the preparation of this GMP Addendum by the Owner, the Total Program Manager shall provide three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based to the CBO. The Total Program Manager shall acknowledge, by signature, on the face of each document of each set that it is the set upon which the Total Program 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 Building Department.

This Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Request for Proposals, 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 Total Program 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 writing and signed by both parties.

3.07 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.08 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advise and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.09 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.12 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.13 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the 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.

3.14 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other

labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.15 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. 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 this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: James F. Notter, Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Michael Garretson, Deputy Superintendent
The School Board of Broward County, Florida
1700 S.W. 14th Court
Fort Lauderdale, FL 33312

To TPM: *Name*
Address
City, State

3.18 **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.

3.19 **Excess Funds.** Any party receiving funds paid by The School Board of Broward County, Florida (SBBC) under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the 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 SBBC.

3.20 **Authority.** Each person signing this Agreement on behalf of either party individually 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.

3.21 **Background Screening.** Total Program Manager agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that Total Program 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 Total Program Manager or its personnel providing any services under the conditions described in the previous sentence. Total Program 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 Total Program Manager and its personnel. The Parties agree that the failure of Total Program 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.

Total Program 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 Total Program 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 Total Program Manager pursuant to Article 2.14 of this Agreement and the laws of Florida.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

ATTEST THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

Superintendent of Schools
James F. Notter

Chair
Beverly A. Gallagher

Approved as to Form:

School Board Attorney

FOR TOTAL PROGRAM MANAGER

(Corporate Seal)

ATTEST
TOTAL PROGRAM MANAGER

Principal

Secretary

Project Consultant's
Registration Number

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed and sworn to by _____
before me this _____ day of _____, 20____.

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed and sworn to by _____
before me this _____ day of _____, 20____.

My Commission Expires:

Signature – Notary Public

(SEAL)

Notary's Printed Name

Notary's Commission No.

Exhibit 1 – Scope of Services

1. Pre-design activities:

- a. Provide or 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 in the form of a written report prior to the final payment for this phase.
- b. Prepare project schedule, including critical path elements, responsibilities of the owner, TPM, architect, contractor, and outside agencies, and update monthly throughout the duration of the contract.
- c. Where the program includes expansion, renovation or remodelling of existing facilities, prepare an analysis package outlining the condition of existing infrastructure and other building systems. The package should contain recommendations, cost estimates and preliminary schedules for accommodation of the expansion, renovation or remodeling. Such information shall be provided to the Owner in the form of a written report prior to final payment for this phase.
- d. Provide project delivery options for the design, bid, and bid packaging of projects for efficient scheduling, cost control and financial resource management.
- e. Procure design services from qualified design professionals.
- f. Utilize an information and reporting system to provide the board with accurate and current cost control, 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 in the form of a written report prior to final payment for this phase.
- g. Provide a project manual which shall describe, as a minimum, the work plan, job responsibilities, and written procedures for reports, meetings, inspections, changes to the project, etc.
- h. Provide market analysis and motivation for contractor interest for the publicly opened bids, and recommendations for minority business participation.
- i. Spot Surveys related to the location of the new buildings, site improvements, utilities and other construction shall be provided by the Total Program Manager during the Pre-Design Phase.

2. Design phase:

- a. Provide value engineering recommendations to maximize the board's capital outlay and operations resources.
- b. Attend all project-related meetings and record proceedings.
- c. Periodically review all design documents for constructability and compliance with applicable laws, rules, codes, design standards, and ordinances.
- d. Periodically update cost estimates and make recommendations to keep the project within the budget.
- e. Periodically update the project schedule and make recommendations for recovery of lost time.
- f. Secure and monitor the review and approval process of governing authorities.
- g. Provide documents in compliance with Exhibit 3 – Electronic Media Submittals.

3. Bid and award phase:

- a. Maintain a list of potential bidders and subcontractors and solicit bidders, including minority participation.
- b. Monitor and review all addenda and coordinate code review compliance.
- c. Prepare and issue bid packages, open or assist in the opening and evaluation of bids from at least two bidders for each trade package, and provide written recommendations.
- d. Receive and review pre-contract documents as required.
- e. Review the schedule-of-values for balance of tasks vs. dollars and compliance with the project schedule.
- f. Review contracts and make recommendations.
- g. Provide guaranteed maximum price for Board Approval.
- h. Provide value engineering during subcontractor bidding phase.
- i. Hold contracts and subcontracts; provide bonding for projects.

4. Construction phase:

- a. Schedule, conduct, and/or attend the preconstruction conference.
- b. Provide contract administration and approval of payments; monitor and record the construction progress; review and approve as-builts and maintenance and warranty manuals from all subcontractors; provide limited construction services; and keep a log of all site visits and observations.
- c. Develop and implement procedures to monitor, record, review, and approve all submittals, shop drawings, change orders, pay requests, and field orders for budget and schedule impact, and compliance with the contract documents.
- d. Provide inspection of all work, materials, and tests prior to wall installation, including substantial completion and occupancy inspections by appropriately certified inspectors.
- e. Ensure that as-builts are being kept up to date by the contractor.
- f. Make recommendations for correction of nonconforming or substandard work.
- g. Coordinate ordering and delivery of owner supplied equipment.
- h. Coordinate the testing, inspections and approvals of project, delivery of instructions for operating all building systems, including training of maintenance staff for the owner.
- i. Prepare final project accounting and provide written evaluation of the A/E, general contractor and major subcontractors.
- j. TPM may perform construction services if approved by board and upon justification of benefits to contract such as savings in cost, in time, improved quality or other issues relevant to delivery of the project within terms of the contract. TPM may perform construction services as authorized by law in cases of emergency under procedures approved by the board.
- k. An As-Built Survey including the location of the new buildings, site improvements, utilities and other construction shall be provided by the Total Program Manager at Substantial Completion.

5. Minimum One-Year Warranty:

- .1 The Total Program Manager shall provide a minimum one (1) year warranty and shall coordinate and supervise the completion of warranty Work during the warranty period. Total Program Manager shall participate with the Owner in conducting of warranty inspections held on the sixth (6th) and eleventh (11th) months after occupancy. Total Program Manager shall deliver as-built drawings, warranties and guaranties to the Owner.

- .2 Where any Work is performed by the Total Program Manager's own forces or by subcontractors under contract with the Total Program Manager, the Total Program 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 Total Program 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 Total Program Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents.
- .3 The Total Program 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 Total Program Manager.
 - (3) Date item corrected. If more than one trip required, document each.
 - (4) Description of action taken to cure warranty item.
 - (5) Obtain signature of school principal or designee acknowledging warranty items have been completed.
 - (6) Other pertinent information, if applicable.
- .4 Assist in the transfer of the project to the maintenance department including the delivery of as-builts warranties, guaranties, and operating instructions.

6. Total Program Manager's Deliverables

- .1 Pre-Design
 - a) Summary Report / Recommendations
 - b) Preliminary Master Project Schedule and monthly updates
 - c) Existing Facility Analysis package, out recommendations, Cost Estimates
 - d) Project Delivery options / packaging recommendations report
 - e) Work Status Monthly Report

f) Project Manual

.2 Design Phase

Monthly Summary of project meetings

Document Reviews / report at each phase (Agreement Exhibit 1). Refer also to attached procedures and TPM review form. (Exhibits G and H).

- Schematic Design
- Design Development
- 50% Construction Documents
- 100% Construction Documents

Preliminary Master Project Schedule Updates

- Schematic Design
- Design Development
- 50% Construction Documents

Cost Estimate Updates

- Schematic Design
- Design Development
- 50% Construction Documents
- 100% Construction Documents

Market Analysis/sub-contractor report

Guaranteed Maximum Price (GMP) Manual

.3 Bidding and Award Phase

Proposed Subcontractor list with MWBE participation.

Bid Packages List

Pre-bid conference attendance list and summary report

Recommendations for award

Bid advertisements

Schedule of Values

Fee due to the Total Program Manager shall be payable.

.4 Construction Phase

Monthly Schedule updates and reports

Summary of all meetings

Preparation and submission of all close-out submittals

Written verification of punchlist items completion, including BCI items

Schedule of Values

.5 Warranty Phase

Warranty Summary Report at end of 6 months (50% of Warranty Phase fee) and 11 months (Balance of Warranty Phase Fee) Warranty Phase (Agreement Exhibit 1, Section 5)

.6 Other Deliverables

Insurance Policies

Payment Applications

Dollar Value / Time graphs

Agreement Execution and Contract Bonds

Closeout documents as set forth in the Contract Documents.

.7 Final Payment

Payment affidavits, release of lien and other requirements

Exhibit 2 – Schedule

INTENTIONALLY LEFT BLANK

Exhibit 3 - Electronic Media Submittal Requirements

The School Board of Broward County, Florida utilizes electronic media as the principal way it develops, communicates and archives information concerning its various construction programs. To that end, the Board's standard Professional Services Agreements for consultant services require submittal of documents produced on electronic media. Requirements for that media are presented below.

ELECTRONIC MEDIA

A. General Requirements:

1. All Work, including surveys drawings, maps, details or other drawing and information to be provided on electronic media by the Consultant. Work under contract shall be accomplished and developed using computer-aided design and drafting (CADD) software and other related software and procedures conforming to the following criteria.
2. The School Board of Broward County, Florida contracts with one or more Internet bid advertising and distribution services and intends to advertise accordingly in addition to other media. Requirements for conversion to read-only electronic documents will be necessary and the project consultant must comply with such requirements. The file formats include Adobe Acrobat Reader and WHIP! Viewer conversions. **E-COMMERCE IS A RAPIDLY EVOLVING ENVIRONMENT AND THE PROJECT CONSULTANT MUST BE AWARE OF EMERGING DEVELOPMENTS. BE ADVISED OF THIS IMPORTANT AND DEVELOPING FORMATTING REQUIREMENT.**

B. Graphic Format:

1. Provide all CADD files with .dwg format using AutoDesk, Inc.'s AutoCAD 2004 version for Windows.
2. It is the responsibility of the consultant to ensure that all electronic files and data deliverables are compatible with owner's target system.
3. Any non-graphical database delivered with prepared drawings: provide in relational database format compatible with Microsoft's Visual Foxpro, most current version of Microsoft Access, or other compatible SQL format database.
4. Maintain all linkages of non-graphical data with graphic elements, relationships between database tables, and report formats.

5. All database tables: conform to the structure and field-naming guidance provided upon request by the Owner.

C. CADD Standards:

1. Standard plotted drawing size: 24 inch x 36 inch or 30 inch x 42 inch sheets.
2. Consultant shall coordinate with the Owner and provide the standard file naming protocol to be utilized.
3. Layering:
 - a. Conform to the most up-to-date guidelines defined by the American Institute of Architects (AIA) standard document, "CAD Layer Guidelines."
 - b. Provide an explanatory list of which layer is used at which drawing and an explanatory list of all layers which do not conform to the standard AIA CAD Layer Guidelines including any user definable fields permitted by the guidelines.
 - c. Layering for Florida Inventory of Schoolhouses (F.I.S.H.) documents: Obtain latest F.I.S.H. layering scheme from Owner prior to production of documents.
4. No deviations from the Owner's established project submittal and checklist standards will be permitted unless prior written approval of such deviation has been received from the Owner.

D. Non-Graphic Format:

1. Provide word processing files in Microsoft Word for Windows compatible file formats including all fonts, typefaces, bit-map and vector graphics and other information necessary for remote printing.
2. Provide spreadsheet files in Microsoft Excel for windows compatible file formats including all fonts, typefaces, bit-map and vector graphics and other information necessary for remote printing.
3. Provide database files in relational database format compatible with Microsoft's Visual Foxpro, Microsoft Access, or other compatible SQL format database including all tables, form and report formats, fonts, typefaces, bit-map and vector graphics and other information necessary for remote printing. Ensure integrity of relational database structure.

E. Delivery Media And Format:

1. Submit copies of all CADD files, data and other electronic files developed under this contract on appropriate electronic digital media as required for project phase

- submittals.
2. The electronic digital media shall be in the format that can be read and processed by the Owner's target CADD system.
 3. The external label for each electronic digital media shall contain, as a minimum, the following information:
 - a. The Project Number, Project Title and date.
 - b. The Facility Name
 - c. The format and version of operating system and software.
 - d. The name and version of utility software used for compression/decompression and copying files to the media.
 - e. List of filenames.
 4. Before a CADD file is placed on the delivery electronic digital media, the following procedures shall be performed:
 - a. Purge all files and remove all extraneous graphics outside the border area and set the active parameters to a standard setting or those in the Owner-furnished seed file.
 - b. Make sure all reference files are attached without device or directory specifications.
 - c. Compress all project electronic files using WINZIP or other compatible file compression/decompression software approved by the Owner.
 - d. All required project files both graphic and non-graphic, shall include color tables, pen tables, font libraries, block libraries, user command files, plot files, etc. All project related blocks must be provided to the Owner as a part of the electronic digital deliverables.
 - e. Make sure that all support files such as those listed above are in the same directory and that references to those files do not include device or directory specifications.

F. Submittal:

1. Submit as Project Record Documents specified above and as required for project phase submittals and project record documents.
2. Submit electronic media with a transmittal letter containing, as a minimum, the following information:

- a. The information included on the external label of each media unit along with the total number being delivered, and a list of the names and descriptions of the files on each one.
- b. Brief instructions for transferring the files from the media.
- c. Certification that all delivery media are free of known computer viruses. The release or version date of the virus-scanning software shall be the current version, which has detected the latest known viruses at the time of delivery of the digital media.
- d. The following "Plot File Development and Project Documentation Information" shall be submitted as an enclosure or attachment to the transmittal letter provided with each electronic digital media submittal.
 - 1) Documentation of the plot file for each drawing which will be needed to be able to duplicate the creation of the plot file by the Owner at a later date. This documentation shall include the plotter configuration (e.g., name and model of plotter), pen settings, drawing orientation, drawing size, and any other special instructions.
 - 2) Instructions concerning how to generate plotted, or hard copy, drawings from the provided plot files.
 - 3) List of all symbols and blocks created for the project.
 - 4) List of any non-IGES crosshatch/patterns used.
 - 5) List of all database files associated with each drawing, as well as a description and documentation of the database format.
 - 6) Recommended modifications which will be necessary to make the data available for GIS use.

G. Ownership:

1. The School Board of Broward County, Florida shall have unlimited rights under the Professional Services Agreement of which this document is a part to all information and materials developed under these and other contractual requirements and furnished to the Owner and documentation thereof, reports, and listings, and all other items pertaining to the work and services pursuant to this agreement including any copyright.
2. Unlimited rights under this contract are rights to use, duplicate, or disclose text, data, drawings, and information, in whole or in part in any manner and for any

purpose whatsoever without compensation to or approval from the Consultant except where otherwise limited within the Contract.

3. The Owner will at all reasonable times have the right to inspect the work and will have access to and the right to make copies of the above-mentioned items.
4. All text, electronic digital files, data, and other products generated under this contract shall become the property of the Owner except where otherwise limited within the Contract.

H. Materials To the Construction Contractor:

1. The Owner and Consultant may make various electronic information available to the Contractor during the Construction phase of the Project. To this end, the Consultant shall make the following information available to the Contractor in electronic format:
 - a. Where electronic media submittals of final site surveys are required: Provide electronic copies of any existing site survey data already on electronic media.
 - b. Where Electronic Project Record Documents are required, the Consultant will provide the Contractor one set of AutoCAD (.dwg) electronic file format contract drawings, to be used for as-built drawings at the Contractor's option. Make electronic file drawings available on the appropriate electronic media.

I. Other Digital Information:

1. A variety of digital information may be generated and used by participants in the design process including the Owner, the Consultant, sub-consultants, Contractor, subcontractors, the Owner's commissioning authority, local jurisdictional authorities etc.
2. The Consultant shall facilitate and participate wherever possible in this digital exchange of information by conforming to the standards expressed above.

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 Total Program Manager - ((Contr Name)), ((State Corp)), ((Contr Street)), ((City State Zip)), ((Contr Phone)) 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, Addenda, Documents contained in the Project Manual, Drawings, Specifications, any General and Supplementary Conditions and all modifications issued after execution of the Contract.
- 1.1.04 Estimate - The Total Program 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 Total Program Manager and Owner and provides day to day management, plan review, inspection and other professional services on the Owner's behalf.
- 1.1.06 Intentionally left blank.
- 1.1.07 Final Completion - Means that date subsequent to the date of Substantial Completion at which time the Total Program Manager has completed all of the Work (or designated portion thereof) in accordance with the Contract Documents as certified by the 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) - the Fixed Limit of Construction Cost, referred to hereinafter as FLCC, is the total dollar value of the sum of the project's anticipated base bid (the project's essential scope) including design contingency.
- 1.1.09 Guaranteed Maximum Price: The GMP is the maximum amount of money that the Owner shall pay the Total Program 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 excluding Total Program Managers fees, prepared by the Facilities Project Manager and issued to the Total Program Manager. See Notice to Proceed attached hereto as Exhibit K.
- 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 2.11 of the Agreement between Owner and Total Program Manager.
- 1.1.13 Owner's Representatives - The Deputy Superintendent of Facilities and Construction Management or designee(s).

- 1.1.14 Owner's Construction Budget: Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is ((Construction Budget)) identified in Exhibit B, including all Total Program Manager fees and costs of the work. This acknowledgment of the Owner's budgeted funds is not to be construed as the Total Program Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 2.1 of the Agreement between the Owner and Total Program Manager Agreement.
- 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 Intentionally left blank.
- 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 Total Program Manager with respect to the Owner's responsibilities.
- 1.1.18 Project - The Projects are the total work to be performed in the Program 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 Total Program 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 Total Program Manager for the performance of any part of Total Program 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 Total Program 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 Total Program 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 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 Total Program Manager to furnish professional services to the project and/or program.
- 1.1.26 Superintendent or Total Program Manager's Project Manager - The executive representative for the Total Program Manager present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner, 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 Total Program Manager, and which engages to be responsible for the Total Program Manager's acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.1.29 Building Code Inspector (BCI): Employees of The School Board of Broward County, Florida, and others designated by the Facilities and Construction Management Department who are certified as a BCI by the Florida Building Commission and/or 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. Any references to "UBCI" within any documents shall mean BCI.
- 1.1.30 Program (Work) - The totality of the obligations, including construction and other services, imposed on the Total Program Manager by the Agreement and Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Total Program Manager to fulfill the Total Program Manager's obligations. The Work may constitute the whole or a part of the Project(s) and/or Program.
- 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 Chief Building Official, Inspections and Code Compliance: ("CBO") An employee of The School Board of Broward County, Florida, who has the responsibility for oversight and management of the Inspection and Code Compliance Section, and has the authority and responsibility for issuing Building Permits.

ARTICLE 2. COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS.

Intentionally left blank.

ARTICLE 3. INTENT AND INTERPRETATION.

Intentionally left blank. See Articles 2.03 and 3.11 of the Standard Agreement.

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

- 4.01 Subject to any rights the Total Program Manager 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 Total Program Manager, subconsultants, Subcontractor or others.
- 4.02 The Total Program Manager shall have the right to keep copies of same upon completion of the Work; provided, however, that in no event shall the Total Program Manager use, or permit to be used, any portion or all of same on other projects without the Owner's prior written authorization.

- 4.03 The Total Program Manager agrees to provide any and all items referred to in this Article to Owner upon demand by Owner. In the event Total Program Manager fails to provide same to Owner as demanded, Total Program 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:

- 5.01 Water For Building Work: The Total Program 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 Total Program Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 5.02 Electrical Energy: The Total Program 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 Total Program Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.
- 5.03 Temporary Sanitary Facilities And Sewers: The Total Program 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.
- 5.04.01 No nuisances will be permitted.
- 5.04.02 Upon completion of Work, such facilities shall be removed and the premises left in a sanitary condition.
- 5.04.03 Total Program 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

- 6.01.01 The Total Program 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 Total Program Managers, Aon line in such conditions as will satisfy Owner operational requirements.
- 6.01.02 It shall conduct the Total Program Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.
- 6.01.03 It shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. It shall provide operational training, in equipment use, for building operators.
- 6.01.04 It shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.
- 6.01.05 It shall continuously review As-Built Drawings and mark up progress prints to provide as much accuracy as possible.
- 6.01.06 The Owner will not occupy or take control of the project until the above items discussed in this paragraph have been completed and the Substantial Completion and Warranty requirements have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection six months after Owner Occupancy.

ARTICLE 7. JOB-SITE FACILITIES

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

ARTICLE 8. TOTAL PROGRAM MANAGER'S STAFF

- 8.01 The Total Program Manager will staff this project in a satisfactory manner to avoid delay. At a minimum, the Total Program Manager site personnel during the construction phase will include: a project manager, a project engineer, full time project superintendent and project administrative personnel. The Total Program Manager shall provide site personnel that are competent, English speaking and are able to communicate effectively.
- 8.02 The Total Program Manager shall remove within fifteen (15) days, at the written request of the Owner's project manager, and Deputy Superintendent, Facilities and Construction Management any of Total Program Manager's project staff who are deemed detrimental to the efficient management and completion of the project.

ARTICLE 9. LINES OF AUTHORITY

- 9.01 The Total Program Manager shall establish and maintain lines of authority for his personnel, and shall provide this organizational chart to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the sub-contractors, the Total Program Manager and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner's representative may attend meetings between the Total Program Manager and his Subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Total Program Manager to direct the subcontractor.

ARTICLE 10. SCHEDULE AND PROJECT MANUAL PROVISIONS

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

ARTICLE 11. QUALITY CONTROL

- 11.01 The Total Program 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

- 12.01 All licenses necessary to commence and prosecute the Work to completion shall be procured and paid for by the Total Program Manager or his subcontractors as part of the cost of work.
- 12.02 Educational facilities constructed by The School Board of Broward County, Florida may be exempt from all county, district, municipal or local building codes and ordinances; therefore building permits may 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 Total Program Manager and will be considered part of the cost of work as defined in Article 26.
- 12.03 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

- 13.01 The Total Program 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.
- 13.02 The Total Program 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

- 14.01 Total Program 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.
- 14.02 Total Program 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.
- 14.03 Total Program 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.

- 14.04 Total Program Manager shall comply with all applicable laws and regulations in performance of the work.
- 14.05 Total Program 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.
- 14.06 These security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.
- 14.07 Such compliance with these security requirements shall not relieve Total Program Manager of its responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner Total Program Manager 's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.
- 14.08 Total Program 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

- 15.01 Total Program 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. Total Program 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.
- 15.1.1 The Total Program 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.
- 15.02 Safety Precautions and Programs:
- 15.2.1 The Total Program Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance on the Contract.
- 15.2.2 In the event the Total Program 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 Total Program Manager shall immediately stop Work in the area affected and report the condition to the Owner 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, plyphlorinated biphenyl (PCB) or other hazardous materials, or when it has been rendered harmless, by written agreement of the Owner, Total Program Manager.
- 15.2.3. The Total Program Manager shall not be required to perform without consent any Work relating to asbestos or plyphlorinated biphenyl: (PCB) or other hazardous materials:
- 15.03 Safety of persons and Property.
- 15.3.1 The Total Program 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 Total Program Manager or the Total Program 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.

15.3.2 The Total Program 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 Total Program 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 Total Program 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.

15.3.3 The Total Program Manager shall implement and maintain a continuing safety program applicable to all Total Program Manager's employees, Subcontractors, and Sub-subcontractors, to include:

.1 Designating a responsible member of the Total Program Manager's organization at the site as the Total Program Manager's Safety Officer whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Total Program Manager's superintendent unless otherwise designated by the Contractor in writing to the Owner.

.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.

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

15.3.5 The Total Program 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 Total Program Manager, Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by an of them, or by anyone for whose acts they may be liable and for which the Total Program Manager is responsible, except damage or loss attributable to acts or omissions of the Owner 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.

- 15.3.6 The Total Program Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 15.3.7 Building materials, Total Program 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 Total Program 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. **Total Program Manager shall provide engineering or other evidence to prove compliance, if requested by the Owner.**
- 15.3.8 **Total Program 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 Total Program Manager shall act, at the Total Program Manager ' s discretion, to prevent threatened damage, injury or loss.
- 15.5 **Total Program Manager shall provide a complete copy of all accident reports within five (5) days of reported accident to Owner.**

ARTICLE 16. MATERIALS

- 16.01 The Total Program 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.
- 16.02 Any such substitution must be approved by the Owner prior to incorporation of the proposed substitution into the Work.
- 16.03 Proposed substitutions must be submitted for consideration from the Total Program Manager to the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Total Program Manager's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available.
- 16.04 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 Total Program Manager.
- 16.05 The Total Program Manager shall make written request to the 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.
- 16.06 If, in the opinion of the Total Program Manager, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Total Program 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

- 17.01 The following requirements apply to all aspects of the Work where skilled crafts or trades are to be utilized:
- 17.02 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.

- 17.03 The Total Program 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.
- 17.04 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.
- 17.05 The Total Program Manager shall post on the inside of the Total Program Manager's on-site project office and maintain by monthly updating a current list, available for the Owner 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.
- 17.06 Work shall not commence in a particular trade or specialty until the Total Program Manager's posted list has been updated to include that particular trade or specialty.
- 17.07 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 Total Program Manager's posted list.
- 17.08 The format for the posted list should begin with the Total Program Manager's company name; name of qualifier with their certificate or registration number; a listing of all the Total Program 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 Total Program Manager's field office to substantiate his posted list.
- 17.09 Requirements for workforce quality specified above do not apply to those elements of the Work requiring only unskilled labor.
- 17.10 The Total Program 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 Total Program 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 Total Program Manager.

ARTICLE 18. INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP.

- 18.01 All material and equipment provided and work performed shall be properly inspected by Total Program 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.
- 18.02 Total Program Manager shall provide safe and adequate facilities, and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit.
- 18.03 The Total Program 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 (UBCI).
- 18.04 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.

- 18.05 Owner shall be afforded full and free access to the shops, factories or places of business of Total Program Manager and its Subcontractors for such quality surveillance, observation or quality audit and to determine the status of the Work.
- 18.06 In the event the Owner requires a factory inspection, the Total Program 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.
- 18.07 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 Total Program Manager's expense.
- 18.08 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 Total Program 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 Total Program Manager for same. Thereupon, Total Program 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 Total Program 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.
- 18.09 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

- 19.01 The Total Program 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:
- 19.02 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, AAs-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,
- 19.03 The project records shall be available at all times to the Owner for reference or review.

ARTICLE 20. OWNER'S RESPONSIBILITIES

Intentionally left blank. See Article 2.06 of the Agreement.

ARTICLE 21. ADMINISTRATION OF THE CONTRACT

- 21.01 The Total Program Manager will provide Administration of the Sub-contracts. The Owner will provide administration of the contract between Owner and Total Program Manager.
- 21.02 The Owner will not 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 Total Program Manager, its Subcontractors or their agents or employees or any other person performing any of the work.

- 21.03 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 Total Program Manager, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 21.04 The Total Program Manager shall forward all communications to the Owner's representative.
- 21.05 The Total Program Manager shall submit Applications for Payment to the Owner for approval prior to Payment to the Total Program Manager.
- 21.06 The Total Program Manager shall approve shop drawings for design only, the Total Program Manager being responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Drawings and Specifications and other Contract Documents.
- 21.07 Intentionally left blank.
- 21.08 Lines of Communication - During pre-construction and construction activities Total Program Manager shall direct all communications to the Project Manager. The Owner shall communicate with the subcontractors or suppliers only through the Total Program 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

- 22.01 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.
- 22.02 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.
- 22.03 The Total Program 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 Total Program Manager.
- 22.04 All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality.
- 22.05 Cost for all reinspection of work found defective and subsequently repaired shall be borne by the Total Program Manager and corresponding subcontractor.

ARTICLE 23. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

- 23.01 In the event that the Total Program 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.
- 23.02 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 Total Program Manager to uncover and subsequently replace such work shall be borne by the Owner; otherwise, such costs shall be borne by the Total Program Manager.

- 23.03 The Total Program 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 Total Program Manager shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.
- 23.04 In addition to its warranty obligations set forth elsewhere herein, the Total Program 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.
- 23.05 The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work.
- 23.06 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.
- 23.07 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 Total Program Manager shall, upon written demand from the Owner, pay the owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 24. SUBCONTRACTS

- 24.01 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 Total Program Manager shall fix the scope of all Work and responsibilities of the Subcontractor. Total Program Manager shall not replace Subcontractor without good cause.
- 24.02 The Total Program Manager shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:
- 24.03 The general form of Subcontract Agreement used by the Total Program Manager within thirty (30) days of execution of the GMP Addendum.
- 24.04 Updated listings of Subcontractors denoting changes to the list submitted within ten (10) days of said change.
- 24.05 Copies of executed Subcontractor Contracts within ten (10) days of their execution.
- 24.06 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application For Payment submitted by the Total Program Manager.
- 24.07 All contracts with Subcontractors shall incorporate by reference the terms and conditions of the Contract Documents.
- 24.08 The Total Program 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 Total Program Manager is replaced by another Total Program Manager pursuant to the term of the Contract Documents. The Total Program Manager shall also include in all Subcontracts a provision requiring the Subcontractor, in the event of the Total Program Manager's termination, to consent to the assignment of their Subcontracts to the Owner.
- 24.09 The Owner may at any time request from the Subcontractors, or any of them, a sworn statement of account with the Total Program Manager and the Total Program 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 Total Program Manager and any legal or statutory provisions that apply to its work, materials or equipment.

- 24.11 Owner may at its discretion require Total Program 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 Total Program 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 Total Program Manager of his liabilities and obligations to the Owner under his Contract and the Total Program 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 attributable to the Owner 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 Total Program Manager within the time and in the manner in which the Total Program 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 Total Program 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 Total Program Manager.
- 24.16 Subcontractor Interfacing - The Total Program Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives. 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 Total Program Manager shall act immediately to remove the threat to health and safety.
- 24.17 Subcontracts to be provided - The Total Program Manager shall include a copy of each subcontract, including the general and supplementary conditions, in the project manual.
- 24.18 Intentionally left blank.
- 24.18.01 The Total Program 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 To the extent that bonds by subcontractors are furnished, 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 Total Program 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. TOTAL PROGRAM MANAGER'S FEES

25.01 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 Total Program Manager shall be paid an additional fee subject to negotiation if the Total Program 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 Total Program Manager.
- (2) 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 Total Program Manager, the Total Program Manager's Additional Construction Phase Fee and General Conditions will be **(insert AddConPhaseFee)** per consecutive calendar day, for each day or portion thereof. The Total Program Manager's staff during such time extensions shall be that shown in Exhibit E and F.
- (3) The Total Program Manager will not be due any Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed One Hundred Thousand (\$100,000) Dollars. Should the GMP be increased by more than One Hundred Thousand (\$100,000) Dollars under the terms of Article 2.07 of the Agreement and Article 27 hereinafter due to no fault of the Total Program Manager, the Total Program Manager's Overhead and Profit for the Construction Phase will be in accordance with Article 2.07 of the Agreement, of that portion of the accumulative increases in the GMP that exceed the GMP by more than One Hundred Thousand (\$100,000) Dollars.
- (4) Total Program 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 is attributable to the Owner, the Total Program Manager's sole and exclusive remedy is an extension of the construction completion date and payment of Construction Phase Fees, Overhead and Profit and General Conditions for the Construction Phase as provided above.

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

- .a Salaries or other compensation of the Total Program Manager's employees at the Project site or Broward Office.
- .b The Total Program 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 Total Program 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 Exhibit 1 to the Agreement between Owner and Total Program 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 Total Program Manager shall administer the DOPP according to the terms included in Document 01295 attached to this agreement.
- .i Salaries and other compensation of the Total Program Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office.
- .j Expenses of the Total Program Manager's principal office and offices other than the Project site office.
- .k Total Program Manager's capital expenses, including interest on Total Program Manager's capital used for the Work.
- .l General Conditions

General Conditions which are not Cost of the Work as defined in Article 26, below, include but are not limited to: Field office rental, field office setup, field office janitorial, field office security, field office furniture, temporary storage containers, temporary plywood partitions, copy machines, fax machines, computers, postage, couriers, blueprints and copies of blueprints, as built drawings, closeout documents, CPM consultants, security guards, I.D. badges, drug testing, living expenses, progress photographs, quality control systems, daily cleanup, final cleaning, pest control, trash dumpsters and associated fees, trash hauling equipment, trash chutes, scaffolding, radios, surveys and layouts, geotechnical surveys, job signs, safety rails, safety supplies, first aid supplies, safety inspections, water/ice/cups, fire extinguishers, temporary roads, tree protection, small tools, temporary fencing, silt fencing, barricades, material unloading, material hoists, personnel hoists, golf carts, punch lists, telephone systems and associated charges, electric charges, water charges, temporary heat portable toilets and tanks, general purpose labor, general purpose carpenters, salaries at project site, horizontal and vertical transportation of materials and personnel, parking space, storage, and the costs of premiums for all insurance and bonds (including subguard) which the Total Program Manager is required to procure by this agreement specifically for the construction project.

ARTICLE 26. COST OF WORK

26.01 Definition - The term Cost of Work shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the Total Program 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 TOTAL PROGRAM MANAGER FOR THE COST OF WORK AS DEFINED IN THIS ARTICLE. SUCH PAYMENT SHALL BE IN ADDITION TO THE TOTAL PROGRAM MANAGER'S FEES STIPULATED IN ARTICLE 25 OF THE GENERAL CONDITIONS.

26.02 Direct Cost Items

26.02.02 Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.

26.02.03 Payments due to subcontractors from the Total Program Manager or made by the Total Program Manager to subcontractors for their work performed pursuant to contract under this Agreement. This includes any subcontractor bonds the Total Program Manager is required to procure.

26.02.04 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, cost on such items used but not consumed will be credited to the Owner at the end of the project.

26.02.05 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 Total Program 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.

- 26.02.06 Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Total Program Manager is liable.
- 26.02.07 No costs shall be paid by the Owner to the Total Program 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 Total Program Manager.
- 26.02.08 Cost incurred due to an emergency affecting the safety of persons and property.
- 26.02.09 If approved by the Owner, the Total Program 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 and the cost of the self-performed work is less than the lowest bid.
- 26.02.10 Transportation greater than 100 miles from the site for Total Program 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 Total Program Manager's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- 26.02.11 Costs for watchman and security services for the project.

- 26.02.12 Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Total Program 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 Total Program 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.
- 26.02.13 Wages shall not be paid for holidays not worked and shall exclude bonuses and other similar extraordinary benefits.
- 26.02.14 Building Layout and Final Survey if performed by a licensed surveyor under a subcontract with the Total Program Manager.
- 26.02.15 Costs of all necessary permits required by any government agency having jurisdiction.
- 26.03 **COSTS NOT TO BE REIMBURSED**
- 26.03.01 Any cost not specifically and expressly described in subsection 26.02 above.
- 26.03.02 Cost which would cause the GMP to be exceeded (other than adjustments pursuant to the terms herein for Change Orders and Construction Change Directives).
- 26.03.03 Cost of the Total Program Manager's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, the Total Program 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 Total Program Manager's home or branch offices, or other outside service locations.
- 26.03.04 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.
- 26.03.05 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.
- 26.03.06 Wages shall not be paid for holidays and shall exclude bonuses and other similar extraordinary benefits.
- 26.03.07 Deductibles paid by Total Program Manager on any insurance claim will not be reimbursed unless the loss could not have been reasonably avoided by Total Program Manager and/or all subcontractors had it reasonably performed all contractual safeguards. Deductibles will otherwise be reimbursed to TPM.
- 26.03.08 Items listed in Section 25.02 of the General Conditions.

ARTICLE 27. CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVES

- 27.01 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.

- 27.01.1 A Change Order or Construction Change Directive is a written order to the Total Program Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in the cost of work, the Total Program Manager's fees, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the cost of work.
- 27.01.2 The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined as follows. Article 26 costs and negotiated percentage (%) fee from Article 2.07 of the Agreement constitute full compensation for all Change Orders and/or Construction Change Directives.
- .a Intentionally left blank.
 - .b Intentionally left blank.
 - .c by cost as defined in Article 26 of the General Conditions and a mutually acceptable negotiated fixed or percentage fee for additional professional services included in the Basic Services of the Agreement.
 - .d Intentionally left blank.
- 27.01.3 **OVERHEAD AND PROFIT:**
- Intentionally left blank. See Article 2.07 of the Agreement.
- 27.01.4 If none of the methods set forth in Clause 27.01.2 is agreed upon, the Total Program Manager, provided it 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 Total Program Manager will establish an estimated cost of the work and the Total Program 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 27.01.2 above, the Total Program Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the cost of work as outlined in Article 26 of the General Conditions. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Total Program 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
- 27.01.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 27 of the General Conditions.
- 27.02 **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.**
- 27.02.01 If the Total Program Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or of any employee or by any separate Total Program 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 Total Program 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.

- 27.02.02 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 Total Program Manager shall be considered to own the schedule float time.
- 27.03 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.
- 27.04 Emergencies - In any emergency affecting the safety of persons or property, the Total Program 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 Total Program Manager on account of emergency work shall be determined as provided in Article 27 of the General Conditions.

ARTICLE 28. DISCOUNTS AND PENALTIES

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

ARTICLE 29. BONDS AND INSURANCE

Intentionally left blank. See Article 2.08 and 2.12 of the Agreement.

ARTICLE 30. INDEMNITY AND HOLD HARMLESS

Intentionally left blank. See Article 2.14 of the Agreement.

ARTICLE 31. TOTAL PROGRAM MANAGER'S INSURANCE

Intentionally left blank. See Article 2.12 of the Agreement.

ARTICLE 32. WAIVER OF SUBROGATION

- 32.01 The Owner and the Total Program 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 Total Program Manager as trustees. The Total Program Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.02 The Owner and Total Program 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 Total Program Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.03 The Owner waives subrogation against the Total Program 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.
- 32.04 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 TOTAL PROGRAM MANAGER

- 33.01 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:
- 33.02 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 Total Program Manager, owner does not waive its right to assess liquidated damages at the completion of the Project:
- 33.03 Liquidated Damages as set forth in this Contract;
- 33.04 Defective Work unremedied;
- 33.05 Punch-List items unremedied;
- 33.06 Subject to Owner ' s written notice to Total Program 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.
- 33.07 Claims filed by subcontractors, laborers, suppliers, materialmen or others;
- 33.08 Failure to comply with any and all insurance requirements;
- 33.09 Failure of the Total Program 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 Total Program 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 TOTAL PROGRAM MANAGER

- 34.01 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 Total Program Manager, or if the Project should be stopped for a period of sixty (60) days by the Total Program Manager, for the Owner's failure to make payments thereon, then the Total Program Manager may, upon seven days written notice to the Owner, request payment for all work executed, the Total Program 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 Total Program Manager.

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

- 35.01 If the Total Program 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 Total Program Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of work, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Total Program Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- 35.02 If the Total Program 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 Total Program Manager and his surety, if any, seven (7) days written notice, during which period Total Program Manager fails to cure the violation, terminate the employment of the Total Program Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Total Program Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Total Program 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 Total Program Manager (excluding monies owed the Total Program Manager for subcontract work).

- 35.03 If the Total Program 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 Total Program Manager in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Total Program Manager and his surety, if any, seven (7) days written notice, during which period Total Program Manager still fails to allow access, terminate the employment of the Total Program Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Total Program Manager, and may finish the project by whatever method he may deem expedient. In such case, the Total Program 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 Total Program Manager (excluding monies owed the Total Program Manager for subcontract work).

ARTICLE 36. TERMINATION BY OWNER WITHOUT CAUSE

- 36.01 If the Owner terminates this Agreement other than pursuant to Article 35, he shall reimburse the Total Program Manager for any unpaid cost of work due him under Article 26, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the cost of work at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Total Program 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 Total Program Manager has previously undertaken or incurred in good faith in connection with said Project. The Total Program 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 Total Program Manager under such obligations or commitments. The Owner may terminate the Total Program Manager's contract in whole or in part and may terminate one or more projects (sites) at its sole discretion and without cause as set forth herein.
- 36.02 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 Total Program Manager his proportionate fee due in accordance with Article 25 plus any costs incurred pursuant to Articles 26.

ARTICLE 37. LAWS AND REGULATIONS

- 37.01 Total Program 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.
- 37.02 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, Total Program 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.

37.03 If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, Total Program Manager shall within fifteen (15) days of discovery of same report the same in writing to Owner who will issue such instructions as may be necessary.

ARTICLE 38. DISPUTE RESOLUTION

38.01 The Owner and Total Program 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.

38.02 The existence of a dispute between the parties shall not be the basis of the Total Program Manager unilaterally electing not to continue performance pursuant to the terms of the Contract Documents.

ARTICLE 39. GOVERNING LAW AND VENUE

39.01 The Construction Contract shall be governed by the laws of the State of Florida.

39.02 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

40.01 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

41.01 The Owner and the Total Program 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 Total Program 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.

41.02 If requested by Owner the Total Program 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 Total Program Manager has defaulted under the Contract Documents. The Total Program Manager shall include in all Subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier, in the event of Total Program 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

42.01 The Owner's liability to Total Program 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 Total Program Manager must submit a Notice of Claim to Owner within 20 days of when the Total Program 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 Total Program 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 Total Program Manager agrees that the Owner shall not be liable for any claim that the Total Program Manager fails to submit as a Request for Change Order as provided in this Article.

42.02 After receipt of a Request for Change Order, the Owner, within a reasonable time, shall deliver to the Total Program Manager its written determination of the claim.

42.03 The venue for all civil actions against the Owner shall be in Broward County, Florida.

42.04 For work the Total Program Manager performs with its own forces, and in addition to the adjustments provided for in Article 25, the Total Program 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, 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 Total Program 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 Total Program 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.

42.05 In the event it shall be determined by a Court of competent jurisdiction that the preceding provisions are inapplicable or unenforceable for any reason or cause, then the Total Program Manager shall be entitled to the sum of \$200 per consecutive calendar day for each day it is actually delayed by the action of or neglect of the Board or Project Consultant or by changes in the Work, or by any other cause of delay which is attributable to the Board or Total Program Manager and beyond the Total Program Manager's control avoidance or mitigation and without the fault or negligence of the Total Program Manager and/or Subcontractor or supplier at any tier. This provision contemplates anticipated 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 Owner 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 Total Program Manager Agreement, are in addition to any monies due pursuant to Article 25.01(2) of the General Conditions.

ARTICLE 43. ROYALTIES AND PATENTS.

43.01 The Total Program Manager shall pay all royalties and license fees.

43.02 The Total Program 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 Total Program Manager and/or Owner for infringement of any United States patent or for wrongful use of proprietary information of any third party.

43.03 Total Program 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 Total Program Manager, or out of the

process of actions employed by, or on behalf of Total Program Manager in connection with the performances of this Construction Contract. Total Program 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 Total Program Manager upon becoming aware of such claims or actions, and provided further, that Total Program Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or its representatives.

- 43.04 Total Program 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.
- 43.05 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

- 44.01 Total Program Manager's records which shall include but not be limited to accounting records, payroll time sheets, 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 Total Program 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.
- 44.02 For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said records from the effective date of this 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.
- 44.03 Owner's agent or its authorized representative shall have access to the Total Program 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.
- 44.04 Total Program 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 Total Program Manager pursuant to this contract.
- 44.05 If an audit inspection or examination in accordance with this Article, discloses overcharges (of any nature) by the Total Program 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 Total Program Manager. If the audit discloses contract billing or charges to which Total Program Manager is not contractually entitled Total Program Manager shall pay over to Owner said sum within 20 days of receipt of a written demand.

ARTICLE 45. MISCELLANEOUS

- 45.01 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 215.422(3)(b), Florida Statutes (1998).
- 45.02 Harmony - Total Program Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Total Program Manager and his Subcontractors for work on the

project shall work in harmony with and be compatible with all other labor being used by Total Program Manager now or hereafter on the site of the project. Total Program Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Total Program 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.

- 45.03 Apprentices - If the Total Program Manager employs apprentices on the project, the behavior of the Total Program 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 Total Program Manager will include a provision similar to the foregoing sentence in each subcontract .
- 45.04 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.
- 45.05 Total Program Manager's Project Records - The Total Program 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.
- 45.06 Public Entity Crime Information Statement - AA 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 Total Program 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.
- 45.07 Electronic Mail Capabilities - The Total Program 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 Total Program Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 45.08 Trench Safety Act - The Total Program Manager must comply with the provisions of the Trench Safety Act (Florida Statutes Section 553.63, 1998).

EXHIBIT A
CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner

Superintendent of Schools
Deputy Superintendent for Facilities and Construction Management

Project Manager

Total Program 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 Site5)) ((Title 5))

EXHIBIT B

OWNER'S CONSTRUCTION BUDGET

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
ESTIMATED COST OF WORK	(())
TOTAL PROGRAM MANAGER'S PRE-DESIGN PHASE FEE	((PreDesignPhaseFee))
TOTAL PROGRAM MANAGER'S DESIGN PHASE FEE	((DesignPhaseFee))
TOTAL PROGRAM MANAGER'S BIDDING AND AWARD PHASE FEE	((Bidding & Award Fee))
TOTAL PROGRAM MANAGER'S CONSTRUCTION PHASE FEE	((ConPhaseFee))
TOTAL PROGRAM MANAGER'S WARRANTY PHASE FEE	((Oamt))
TOTAL PROGRAM MANAGER'S OVERHEAD	((Wamt))
TOTAL PROGRAM MANAGER'S PROFIT	((Pamt))
TOTAL PROGRAM MANAGER'S GENERAL CONDITIONS	((GC Fee))
TOTAL PROGRAM MANAGER'S TOTAL FEES	(())
OWNER'S TOTAL CONSTRUCTION BUDGET (FLCC)	((FLCC))

EXHIBIT C

TOTAL PROGRAM 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))
((OnSite2))	((Title2))
((OnSite3))	((Title3))
((OnSite4))	((Title4))
((OnS ite5))	((Title5))

((TO Be Assigned))

EXHIBIT D

**TOTAL PROGRAM 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

**TOTAL PROGRAM 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

**TOTAL PROGRAM 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))