

ORIGINAL

**Document 00500
STANDARD FORM OF AGREEMENT
BETWEEN
THE OWNER
AND THE
DESIGN BUILDER**

THIS AGREEMENT made as of the 23rd day of January, A.D. 2001, BY and BETWEEN DECON ENVIRONMENTAL & ENGINEERING, Inc. hereinafter called the "Design Builder" and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, hereinafter called the "Owner."

WITNESSETH:

The Design Builder and Owner for the considerations hereinafter named agree as follows:

ARTICLE 1. SCOPE OF THE WORK

The Design Builder shall furnish all of the design services, construction, materials, labor, and other services as necessary to perform all of the Work necessary to construct:

Name of Project: Design/Build Modular Classroom Buildings
Project No. 0571-21-01
Facility/School Name: Tedder Elementary School
Pompano Beach, Florida

which design shall be as described in the Contract Documents RFP# 2000-103.

The Design Builder shall do everything required by this agreement, the General Conditions of the Contract, the Design/Criteria Package, Addenda thereto, and other proposals made by the Design Builder as may have been accepted by the Owner during the selection of the Design Builder in response to the Request for Proposals as part of the above named Design Criteria Package. The said documents and Addenda thereto (if any) are by reference made a part and parcel of this agreement, the same as if they were written herein word for word.

ARTICLE 2. CONTRACT SUM

The Owner shall pay, and the Design/Builder shall accept, as full and complete payment for the Design/Builder's timely performance of its obligations hereunder, the fixed price of:

One Million Four Hundred Five Thousand Four Hundred Sixty Five Dollars (\$1,405,465)

ARTICLE 3 TIME FOR COMPLETION

The work to be performed under this Contract shall be prepared to commence Work within five days after the signing, execution and delivery of this agreement.

A Notice to Proceed (NTP) will be issued to the Design Builder authorizing him/her to commence Work under this Contract. Time limits for the performance of an NTP issued under this contract will be defined in the NTP and shall be based upon the time limits stipulated by the Design Criteria Package.

3.01 Liquidated Damages for Substantial Completion:

The Design/Builder shall pay the Owner the sum of:

Five Hundred Dollars

\$ 500

per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion.

In the event more than one phase is involved, then the liquidated damages due for each phase shall be as follows:

Phase	_____ Dollars	\$ _____
Phase	_____ Dollars	\$ _____
Phase	_____ Dollars	\$ _____

Owner and Design/Builder acknowledge that any sums due and payable hereunder by the Design/Builder shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs, likely to be sustained by the Owner, estimated at the time of executing this Contract. If the Owner reasonably believes in its discretion that Substantial Completion will be delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Design/Builder an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when in its discretion the Design/Builder 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 Design/Builder those funds withheld, but no longer applicable, as liquidated damages.

Partial use or occupancy of the Work shall not result in the Work deemed substantially completed, and such partial use or occupancy shall not be evidence of Substantial Completion.

Substantial Completion, in the context of this Contract, does not refer to any prior dates wherein the Owner employs other contractors to work on the same site of the Project or Work.

ARTICLE 4. SUBSTANTIAL COMPLETION AND FINAL PAYMENT.

Substantial Completion:

When the Design/Builder believes that Substantial Completion has been achieved, the Design/Builder shall notify the Design Criteria Professional in writing and shall provide to the Design Criteria Professional a listing of those matters yet to be finished. The Design Criteria Professional will determine whether the Work (or portion thereof) is appropriately ready for a Substantial Completion Inspection.

If the Work is determined to be ready for a Substantial Completion Inspection, the Design Criteria Professional and Owner will thereupon conduct an inspection of the Work to determine if the Work is, in fact, substantially complete and establish a list of items necessary for the Design/Builder to correct or finish. When Substantial Completion has been granted as evidenced by the Substantial Completion Inspection, the Design Criteria Professional will issue a letter formally establishing the Substantial Completion Date for the Work or portion thereof.

Upon Substantial Completion, the Owner shall pay the Design/Builder an amount sufficient to increase total payments to the Design/Builder to the Contract Price, less any amounts attributable to liquidated damages, together with two hundred percent (200%) of the reasonable costs (as determined by the Owner at its sole discretion), for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming

Work and handling any outstanding or threatened claims or any other matters which could cause the Owner damage, cost, expense or delay.

4.02 Final Completion:

When the Design/Builder believes that the Work, or portion thereof, is finally complete and is ready for a final inspection, the Design/Builder shall notify the Design Criteria Professional in writing. The Design Criteria Professional will then determine whether the Work (or portion thereof) is appropriately ready for a Final Completion Inspection.

If the Work is determined to be ready for a Final Completion Inspection, the Design Criteria Professional and Owner will thereupon conduct an inspection of the Work to determine if the Work is, in fact, finally complete. When Final Completion has been granted as evidenced by the Final Completion Inspection, the Design Criteria Professional will issue a letter formally establishing the Final Completion Date for the Work or portion thereof.

When the Design Criteria Professional and Owner confirms that the Project is complete in full accordance with the Contract Documents and has passed all required inspections, including but not limited to those required by the State Department of Education, and/or from any and all governmental bodies, boards, entities, etc., and that the Design/Builder has performed all of its obligations to the Owner, the Design Criteria Professional will provide a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Design/Builder is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to Contract Documents.

Liquidated Damages for Final Completion:

If the Design/Builder fails to achieve final completion within 30 days of the date of Substantial Completion, the Design/Builder shall pay the Owner the sum of:

Two hundred Dollars

\$ 200.00

per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for final completion of the Work.

In the event the Project involves more than one phase, then the final completion date and liquidated damages amount for each phase shall be as follows:

Phase	_____ Dollars	\$ _____
Phase	_____ Dollars	\$ _____
Phase	_____ Dollars	\$ _____

Any sums due and payable hereunder by the Design/Builder shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Design/Builder an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.

Prior to being entitled to receive final payment, and as a condition precedent thereto, the Design/Builder shall provide the Owner, in the form and manner required by Owner, if any, with a copy to the Design Criteria Professional, of the following:

An affidavit that all of the Design/Builder's obligations to subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;

Such other documents as required by the Owner from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Owner;

All product warranties, operating manuals, instruction manuals and other things or documents customarily required of the Design/Builder, or reasonably required by Owner, including but not limited to those required elsewhere in the Contract Documents, as part of its Project Closeout procedures;

The Owner shall, subject to its rights set forth in the Contract Documents, make final payment of all sums due the Design/Builder within thirty (30) days of the final Approval for Payment.

The Owner and Design Criteria Professional may acknowledge satisfactory completion and accept the Work notwithstanding the existence of certain items of Work which are incomplete. As set forth in Article 5.03.03 of Article 5 hereof, the Owner may, but is not obligated to guarantee completion of incomplete items of Work by escrowing funds equal to two hundred (200%) percent of the estimated cost of the incomplete Work and shall establish a reasonable date by which all incomplete Work must finally be complete.

ARTICLE 5. NOTICE TO PROCEED (NTP) AND DESIGN BUILDER'S INVOICE

The Owner shall pay the Design Builder for the performance of the Contract based upon invoices submitted by the Design Builder for services performed. The Design Builder's invoices for progress payments shall be based upon prices submitted by the Design Builder as listed upon the Project Cost Proposal Form for Work authorized by the Owner on an NTP and related Project Cost Analysis (Schedules of Values) submitted during the development of the Design Builder's proposal.

Due to ongoing or proposed construction projects and temporary portable buildings at some school site modular locations, the Owner may be prevented from issuing a Notice To Proceed (NTP) for various project construction periods specified in the contract documents. The Owner reserves the right to issue an NTP for any project within three (3) years commencing from the date of the project contract award. The project contract amount shall be adjusted based upon the "Engineering News Record" Median Square Foot cost for school Construction as adjusted for Fort. Lauderdale, Florida, for each year or part thereof, beyond the original award date.

ARTICLE 5. ALTERNATE PROPOSAL(s)

This Contract accepts and includes alternate proposal(s):

None

It is mutually agreed by and between the parties hereto that the Owner reserves the right at any time during the performance of this Contract to accept any or all of the remaining alternate proposal(s) in accordance with the proposal submitted by the Design Builder.

ARTICLE 7. ACCEPTANCE AND PAYMENTS

The Owner may make progress payments during the progress of the Work in amounts not to exceed ninety per cent (90%) of the amount due on the site as certified by the Design Builder and approved by the Owner's designated representative.

Upon completion of the Work, the Design Builder shall submit evidence satisfactory to the Owner that all payrolls, material bills and other indebtedness incurred by the Design Builder in connection with the construction of the project have been paid in full. After such evidence has been submitted and written notice has been given the Owner that the work is ready for final inspection and acceptance, the Work shall be inspected by or under the direction of THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, and when it is found that the work is acceptable under the contract, and that the Work has been fully performed, the Owner's Representative shall then issue a final certificate stating that the Work has been completed and has been inspected under the terms and conditions thereof, and that the consideration herein provided for is due under the contract to the Design Builder, and noted in such final certificate, whereupon after such inspection and acceptance, final payment, except as provided in the next paragraph shall be due within 30 days, provided the work be then fully completed and the Work fully performed.

If the Design Builder has failed to complete the Work within 144 days of the date specified within the NTP, the Owner, at his option, may cancel the NTP and have the Work completed by another contractor, Design Builder, his own forces, or the Design Builder's surety.

Ten per cent (10%) of the contract price shall be withheld whenever partial progress payments are applicable.

ARTICLE 8. CONTRACT TERMINATION

In the event this contract is terminated by the Owner for failure of the Design Builder to comply with the terms of the contract, then in that event the Design Builder shall be liable to and pay the Owner any and all damages which it may sustain by failure of the Design Builder to comply with the terms of this contract.

ARTICLE 9. PROTECTION OF OWNER'S PROPERTY

At all times during the performance of this contract, the Design Builder shall protect the Owner's property from all damage whatsoever on account of the work being carried on under this contract.

ARTICLE 10. INSURANCE REQUIRED

Prior to commencement of work, the Design Builder shall be required to furnish assurance and evidence that the insurance specified and required to be carried by the Contract below and/or elsewhere in and by the Contract and Contract Documents by filing with the Owner a Certificate of Insurance, executed by an authorized representative of the Design Builder's insurance carrier. Said insurance shall not be changed or cancelled during the progress of the work covered thereby without giving the Owner thirty (30) days advance notice in writing. All insurance companies shall be authorized to do business in the State of Florida. The Design Builder shall comply with the requirements of Article 42, Insurance Requirements of Document 00700 General Conditions of the Contract.

ARTICLE 11. PERFORMANCE BOND AND PAYMENT BOND

The Contract shall become effective and in full force upon the execution of this agreement, concurrently with the delivery of performance bonds and payment bonds as specified below.

Performance and Payment Bonds shall be based upon 100% of the Base Cost Proposal plus the total cost of any alternate cost items as submitted by the Design Builder and accepted by the Owner.

Performance Bonds and Payment Bonds shall be issued by a Surety Company approved by the U.S. Treasury Department and licensed to do business in Florida, and executed and signed by a resident agent having an office in Florida, representing such Surety Company, said bond guaranteeing the performance of the Contract and as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Performance Bonds and Payment Bonds shall be issued by the Surety Company on the forms provided within the Proposal Documents. No other forms will be acceptable. These forms are:

- A. **Document 00600, Design Builder's Performance Bond:** Required in the amount of 100 percent of the Owner accepted proposal amount. Subsequent NTP's for reuse will require additional bonds in the amount of 100% of the value of any subsequent NTP's. Any subsequent NTP shall not become effective, and the Design Builder may not proceed with any Work related to such subsequent NTP until the Design Builder has provided a new performance bond for that NTP.
- B. **Document 00610, Design Builder's Payment Bond:** Required in the amount of 100 percent of the Owner accepted proposal amount. Subsequent NTP's for reuse will require additional bonds in the amount of 100% of the value of any subsequent NTP's. Any subsequent NTP shall not become effective, and the Design Builder may not proceed with any Work related to such subsequent NTP until the Design Builder has provided a new performance bond for that NTP.

ARTICLE 12. DESIGN SERVICES AND RESPONSIBILITIES

The Design Builder agrees to provide complete professional architectural and engineering services set forth in the Phases enumerated hereinafter and in Florida State Board of Education's **State Requirements for Educational Facilities (SREF), 1999**; including all civil, structural, mechanical, electrical engineering, interior design, landscape architectural design, and other related professional services normally required for a project of specific type as follows:

A Construction Documents Phase:

- 1) From the Owner accepted proposal submittal, the Design Builder shall prepare for approval by the Owner and State Department of Education, and in accordance with Owner's format, Final Construction Documents setting forth in detail the requirements for the construction of the Project in accordance with the Design Criteria Package and the Florida Department of Education's **State Requirements for Educational Facilities, 1999 (SREF)**. The Design Builder is responsible for full compliance of the design and the Construction Documents with **SREF** and all applicable codes and jurisdictions referenced therein. The Design Builder, upon approval of the Owner, may submit separate documents for site development (including demolition, abatement of hazardous materials, earthwork, etc.) as needed to allow for project scheduling considerations. Work defined in such phased document submittals may begin upon receipt of approval of those phased documents by the Department of Education as further discussed below.
- 2) The Final Construction Documents shall be developed in accordance with **SREF 1999**. At the Owner's option, and with the approval of the Department of Education, the Department of Education's review may be undertaken by members of the Owner's staff or other agency assigned to complete the review.
- 3) The Design Builder will coordinate and cooperate with the Owner concerning submittal procedures and protocol for delivering construction documents and any approvals required by The School Board of Broward, County prior to submittal of construction documents to the Department of Education.

- 4) The Design Builder shall cooperate fully to ensure timely review of the Construction Documents by the reviewing agency. The Design Builder shall make all required changes or additions and resolve all questions on the documents resulting from the Department of Education Review, including resubmittals and review by the Department of Education if such resubmittal is required as a result of the initial review.
- 5) In addition to the number and types of document sets required by the Department of Education, the Design Builder shall submit two complete sets of all documents to the Owner and shall include an updated copy of the Project Development Schedule.
- 6) The Design Builder shall be responsible for filing the required documents for approval by all governmental authorities or agencies having jurisdiction over the Project and for obtaining certifications of "permit approval" by reviewing authorities prior to construction or as required during the appropriate sequence of construction.
- 7) The Design Builder shall make original documents or reproducible copies thereof available to the Owner for reproduction of additional copies as may be required for informational and UBCI inspection purposes.

ARTICLE 13. CONSTRUCTION SERVICES

Upon approval of the Design Builder's construction documents by the Department of Education, the Design Builder is authorized to proceed with construction on site as defined by the NTP and the contract documents.

ARTICLE 14. ASSIGNMENT

Neither party to the Contract shall sell, assign or sublet the same without the written consent of the other; nor shall a Contractor assign any monies due or to become due to the Contractor by reason of the Contract without the previous written consent of the Owner and of the surety on the Contractor's Bonds, all approved by the Attorney for the Owner.

ARTICLE 15. DESIGN BUILDER'S SUBMITTED INFORMATION

Owner approved submittals, including The Minority Business Enterprise (MBE) Requirements as set forth in the Design Criteria Package and the associated MBE Forms MBE 1 through MBE 4, as well as the other submittals described in the Design Criteria Package and the General Conditions of the Design/Build Contract are as fully a part of the Contract as if written herein word for word.

ARTICLE 16. EXCLUSIVITY OF CONTRACT

This Agreement does not confer on the Design Builder any exclusive rights to work competitively bid or issued by way of other design/build contracts by The School Board of Broward County, Florida. The Design Builder may submit proposals for any professional design or construction services which the Design Builder is qualified to perform, which proposals may be publicly solicited by the Owner outside this Agreement.

ARTICLE 17. CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement Form, Indemnification Clause, Conditions of the Contract and Design Criteria Package for Design/Build Modular Classroom Building Phase II (RFP 2000-103), applicable Bonds, and including all modifications thereof, and Proposals

which may have been accepted by the Owner and incorporated in the Documents prior to the execution thereof.

The documents listed above form the Contract, and they are as fully a part of the Contract as if written herein word for word.

ARTICLE 18. INDEMNIFICATION

To the fullest extent permitted by law, DECON ENVIRONMENTAL & ENGINEERING, INC., shall indemnify and hold harmless the Owner, its members, officers, employees and agents (hereinafter collectively "Related Parties") from and against any and all liability, claims, causes of action (by whomever brought or alleged and regardless of the legal theories upon which the liability, claims or causes of action are based), losses, damage, costs, expenses and fees (including but not limited to reasonable fees of attorneys, expert witnesses and other consultants), which are or may be imposed upon, incurred by or asserted against Owner and/or the Related Parties to the extent said liability, claims, causes of action, losses, damages, costs, expenses and/or fees are caused by DECON ENVIRONMENTAL & ENGINEERING, INC., negligent, reckless or intentional wrongful acts of omission, error, misconduct, or commission.

In any and all claims against the Owner by any employee of DECON ENVIRONMENTAL & ENGINEERING, INC., or anyone for whose acts DECON ENVIRONMENTAL & ENGINEERING, INC., may be liable, the obligations for DECON ENVIRONMENTAL & ENGINEERING, INC., to indemnify Owner under this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for DECON ENVIRONMENTAL & ENGINEERING, INC., under workman's compensation acts, disability acts, or other employee benefit acts.

In the event that any claims are brought or actions filed against the Owner with respect to the indemnity contained herein, DECON ENVIRONMENTAL & ENGINEERING, INC., agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. DECON ENVIRONMENTAL & ENGINEERING, INC., agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. DECON ENVIRONMENTAL & ENGINEERING, INC., further agrees to pay, at the sole expense of DECON ENVIRONMENTAL & ENGINEERING, INC., the attorney's fees and costs incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. At its sole option the Owner shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions asserted against the Owner.

DECON ENVIRONMENTAL & ENGINEERING, INC., recognizes the nature of the indemnification obligations imposed under this contract and voluntarily makes these covenants. The obligation imposed upon DECON ENVIRONMENTAL & ENGINEERING, INC., under this Indemnification Agreement shall survive termination of this contract.

ARTICLE 19. NOTICE PROVISION

Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the jobsite, with a copy via telecopier or facsimile to the addresses shown below, or by registered mail or overnight delivery/courier service (e.g., Federal Express) to that party at the addresses shown below:

Party:	Address:
Owner:	The School Board of Broward County, Florida 600 SE 3 rd Avenue Fort Lauderdale, FL 33312 Attn: Frank L. Till, Jr. Superintendent of Schools
With Copy To:	Facilities and Construction Management Division 1700 SW 14 th Court Fort Lauderdale, Florida 33312 Attn: Rick Ragland, Director, Project Management
Contractor:	DECON ENVIRONMENTAL & ENGINEERING, INC. 2625 NW 31 st Ave. Fort Lauderdale, Florida 33311 Attn: Sara Levin, President
Architect:	ACAI Associates, Inc 3455 NW 55 th treet Fort Lauderdale, Florida 33309 Attn: Adolfo Cotilla, Architect
Surety:	Gulf Insurance Co. 125 Broad Street, 8th Floor New York, NY 10004
Surety's Agent:	Security Bond Associates Inc. 10131 SW 40th Street Miami, FL 33165
Design Criteria Professional:	Spillis Candela and Partners, Inc. 800 Douglas Entrance Coral Gables, Florida 33134 Attn: James Koepp, Architect

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


END OF CONTRACT ARTICLES

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written in two counterparts, each of which shall without proof or accounting for the other counterpart, be deemed an original contract.

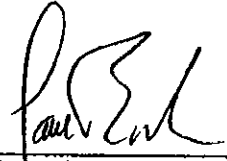
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(SEAL)

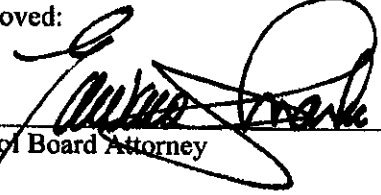
**ATTEST THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA**



Franklin L. Till, Jr.
Superintendent of Schools

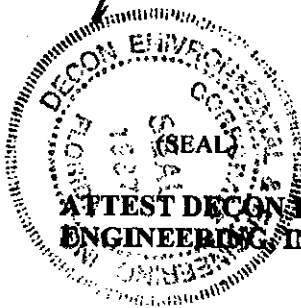


Paul D. Eichner, Esquire
Chairperson

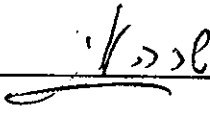
Approved:


School Board Attorney

DECON ENVIRONMENTAL & ENGINEERING, INC.

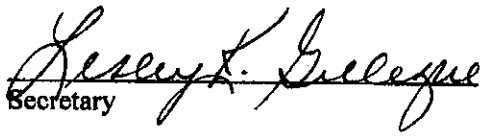


**ATTEST DECON ENVIRONMENTAL &
ENGINEERING, INC.**



President

Sara Levin



Secretary

Leslie K. Gillespie

CGC 044418
Contractor's Certification Number

AA C001323
**Project Consultant's
Registration Number**

ACKNOWLEDGEMENT

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 7 day of February, 2001 by

Sara Levin, President of

Decon Environmental & Eng., Inc., on behalf of the corporation or agency.

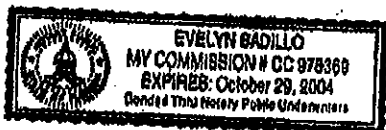
He/she is personally known to me or produced

_____ as

Identification and did/did not first take an oath.

My commission expires:

(SEAL)



Evelyn Badillo
Signature - Notary Public

Evelyn Badillo
Printed Name of Notary

CC 978369
Notary's Commission No.