

INTERNAL AUDIT REPORT

**Current Status Update of the McGladrey, LLP Operational
Review of the Office of Facilities and Construction**

June 2017



To be presented to the:

**Audit Committee on
June 22, 2017**

**The School Board of Broward County, Florida on
September 6, 2017**

By

The Office of the Chief Auditor



The School Board of Broward County, Florida

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THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

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Office of the Chief Auditor
Patrick Reilly, Chief Auditor
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The School Board of
Broward County, Florida

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June 15, 2017

Members of the School Board of Broward County, Florida
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ANN MURRAY
DR. ROSALIND OSGOOD

Ladies and Gentlemen:

ROBERT W. RUNCIE
Superintendent of Schools

This Current Status Update of the McGladrey Operational Review of the Office of Facilities and Construction (OFC) was performed in accordance with the 2016-2017 Audit Plan. The original McGladrey LLP Review of the Office of Facilities and Construction dated June 2012 contained forty-three observations/recommendations. There were three previous Current Status reports performed. This current status update includes the review of the 16 observations/recommendations that were identified as Ongoing in the latest (April 15, 2015) Current Status Report. This report consists of a review of the Current Status responses from management and analysis of the supporting documentation associated with their reported actions to date. The objective of this audit was to review Current Status responses from the OFC and report the results and actions to the Audit Committee and the School Board; Review and analyze actions taken to address the findings and recommendations in the original audit and follow-up report; Review and report on procedural internal control weaknesses identified in the original audit report; Document organizational or procedural changes associated with the previously identified items and report recommendations to the administration, if needed.

The Office of the Chief Auditor (OCA) has identified that of the sixteen observations/recommendations reviewed in this report, fifteen have been completed with the implementation of the CM@Risk contract being used by the District. Observation No. 39 is no longer applicable.

The Current Status Update provides detailed analysis of management's responses to the observations and OCA's conclusions regarding the status of the implementation of each recommendation. Regarding Observation No. 21 related to General Conditions and Labor Negotiations, this observation/recommendation was not adopted by management. Management chose to maintain a lump sum approach to General Conditions, rather than a reimbursable expense. The Office of the Chief Auditor and RSM (formerly McGladrey) recommended the reimbursable method to General Conditions. The District began using the revised CM@Risk contract in November 2016.

We would like to thank the Office of Facilities and Construction who aided in the completion of this report.

This report will be presented to the Audit Committee at its June 22, 2017 meeting and to the School Board at its September 6, 2017 meeting.

Sincerely,



Patrick Reilly, CPA
Chief Auditor
Office of the Chief Auditor

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EXECUTIVE SUMMARY

Scope and Methodology

This Current Status Update of the McGladrey Operational Review of the Office of Facilities and Construction (OFC) was performed in accordance with the 2016-2017 Audit Plan. The original McGladrey LLP Review of the Office of Facilities and Construction dated June 2012 contained forty-three observations/recommendations. There were three previous Current Status reports performed. This current status update includes the review of the 16 observations/recommendations that were identified as Ongoing in the latest (April 15, 2015) Current Status Report. This report consists of a review of the Current Status responses from management and analysis of the supporting documentation associated with their reported actions to date. The objective of this audit was to review Current Status responses from the OFC and report the results and actions to the Audit Committee and the School Board; Review and analyze actions taken to address the findings and recommendations in the original audit and follow-up report; Review and report on procedural internal control weaknesses identified in the original audit report; Document organizational or procedural changes associated with the previously identified items and report recommendations to the administration, if needed.

Our audit was conducted in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. The aforementioned standards require that we plan and perform the audit to ensure a reasonable basis for our judgments and conclusions regarding the function under audit. An audit includes assessments of applicable controls and compliance with the requirements of laws, rules and regulations when necessary to satisfy the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

It is our responsibility to perform the review under generally accepted auditing standards and Government Auditing Standards, as well as provide recommendations to improve operations, strengthen internal controls and ensure compliance with the requirements of laws, rules and regulations in matters selected for review. It is the administration's responsibility to implement recommendations, to maintain an internal control environment conducive to the safeguarding of District assets and to preserve the District's resources, and to comply with applicable laws, regulations and School Board policies.

The procedures used to satisfy our objectives in this audit included the following:

- Request and review Current Status Update responses from management;
- Review correspondence and contract documents used to administer the contracts associated with construction projects noted in the original report and follow-up report;
- Review construction contracts and contract bulletins to determine that they were updated as recommended by RSM (McGladrey LLP);
- Interview staff, correspond electronically to request specific documentation required to verify actions and document rationale for the same;
- Perform other auditing procedures as deemed necessary.

Opinion and Summary of Results

The Office of the Chief Auditor (OCA) has identified that of the sixteen observations/recommendations reviewed in this report, fifteen have been completed with the implementation of the CM@Risk contract being used by the District. Observation No. 39 is no longer applicable.

The Current Status Update provides detailed analysis of management's responses to the observations and OCA's conclusions regarding the status of the implementation of each recommendation. Regarding Observation No. 21 related to General Conditions and Labor Negotiations, this observation/recommendation was not adopted by management. Management chose to maintain a lump sum approach to General Conditions, rather than a reimbursable expense. The Office of the Chief Auditor and RSM (formerly McGladrey) recommended the reimbursable method to General Conditions. The District began using the revised CM@Risk contract in November 2016 (see Exhibit A).

We would like to thank the Office of Facilities and Construction who aided in the completion of this report.

Audit performed by:

Gerardo Usallan

Submitted by:

Patrick Reilly, CPA
Chief Auditor
Office of the Chief Auditor

**SECTION I
CURRENT STATUS MATRIX**

THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
 Prepared by the Office of the Chief Auditor

| Observation #8 – Disclosure of Related Party Relationships | | | |
|--|---|---|---|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the Agreement between Owner and Construction Manager, Article 3.4 Bidding and Awarding Phase, we noted that the contract did not require the Construction Manager to disclose any related party relationships with bidding subcontractors.</p> | <p>We recommend OFC amend the contract to include language requiring the Construction Manager to disclose any related party relationships to the Owner prior to awarding the subcontract.</p> <p>Related party relationships between the Construction Manager and the subcontractor heighten the risk for collusion and overcharges to the Owner. By requiring the Construction Manager to disclose these relationships, the Owner can monitor them more effectively.</p> <p>Please refer to our redlined contract template to see our suggested wording changes.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation.</p> <p>ECD: January 2013</p> <p>Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status - Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Section 3.4.5 of the CM Contract (See page 42).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status – Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The amended CM @ Risk contract has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> |

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| <p>Observation #8 – Disclosure of Related Party Relationships, cont'd.</p> | | <p>February 2013 McGladrey Follow-up Response Status – Implemented. McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
Prepared by the Office of the Chief Auditor

| Observation #9 – Buyout Savings Reconciliation | | | |
|---|--|---|--|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the Agreement between Owner and Construction Manager, Article 3.4 Bidding and Awarding Phase, we noted that the contract did not require the Construction Manager to submit to the Owner a buyout reconciliation of all subcontracts commitments.</p> | <p>We recommend OFC amend the contract to include language requiring the Construction Manager to submit to the Owner a buyout reconciliation of all subcontract commitments. Furthermore, this result should be presented in the schedule of values so that the net buyout adjustment is shown in the Owner Savings / Buyout line of the schedule. Requiring a buyout reconciliation and reviewing it against supporting documentation will enable the Owner to monitor project savings more effectively. Please refer to our redlined contract template to see our suggested wording changes.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation. ECD: January 2013 Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status - Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Section 3.4.8 of the CM Contract (See page 42).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status – Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The buyout reconciliation process has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> |

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| <p>Observation #9 – Buyout Savings Reconciliation, Cont'd.</p> | | | <p>February 2013 McGladrey Follow-up Response Status – Implemented</p> <p>McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
 Prepared by the Office of the Chief Auditor

| Observation #10 – Buyout Savings Reconciliation – Monthly Reconciliation | | | |
|--|---|--|--|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the Agreement between Owner and Construction Manager, Article 6.1 Guaranteed Maximum Price for Construction, we noted that the contract did not require the Construction Manager to submit to the Owner a buyout reconciliation monthly (as applicable).</p> | <p>The buyout savings account on the Schedule of Values should be adjusted monthly as subcontracts are awarded during the construction period through use of a Change Order. The Construction Manager should submit documentation to the Owner to support the original buyout reconciliation, as well as support for each change to the buyout reconciliation thereafter. This documentation should be reviewed by the Owner as part of the pay application review process. Requiring a buyout reconciliation and reviewing it against supporting documentation will enable the Owner to monitor project savings more effectively. Please refer to our redlined contract template to see our suggested wording changes.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation. ECD: January 2013 Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status - Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Section 6.1.2 of the CM Contract (See page 47).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status – Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The buyout reconciliation process has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> |

Observation #10 – Buyout Savings Reconciliation – Monthly Reconciliation, cont'd.

February 2013

McGladrey Follow-up Response

Status – Implemented

McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.

**THE SCHOOL BOARD OF BROWARD COUNTY
OFFICE OF THE CHIEF AUDITOR**
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction

| Observation #11 – General Conditions as a Reimbursable Not-to-Exceed Cost | | | |
|---|--|---|---|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the Agreement between Owner and Construction Manager, Article 7.1.04 General Conditions for Construction Phase, we noted that General Conditions is a negotiated sum paid to the Construction Manager rather than a Not-to-Exceed, reimbursable cost.</p> | <p>We recommend OFC amend the contract to include industry standard language (in line with the Standard AIA Contract) that sets General Conditions as a reimbursable not-to-exceed cost. By reimbursing the Construction Manager for General Conditions based on actual costs incurred and paid, rather than negotiating a Lump Sum, the Owner can ensure that they do not over pay the Construction Manager for costs that were never actually incurred. Please refer to Observation #22 for additional information, our redlined contract template to see our suggested wording changes, and Cost Avoidance observation #3 for both the Parkway and Walker projects, which outlines how the OFC can avoid potential cost of approximately \$590,000 on future comparable projects.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation. ECD: January 2013 Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Follow-up Response Status – Complete Observation No. 11 related to General Conditions as a Reimbursable Not-to-Exceed Cost, this observation/recommendation was not adopted by management. Management chose to maintain a lump sum approach to General Conditions, rather than a reimbursable expense. The Office of the Chief Auditor and RSM (formerly McGladrey) recommended the reimbursable method to General Conditions. The District began using the revised CM@Risk contract in November 2016. June 2017 OF&C Management Response Item is complete - see Section 7.1.3 of the CM Contract (See page 48). April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board. April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> |

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| <p>Observation #11 – General Conditions as a Reimbursable Not-to-Exceed Cost, cont'd.</p> | | <p>February 2014 OCA Follow-up Response Status – Ongoing</p> <p>On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response</p> <p>The revised CM Agreement has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> <p>February 2013 McGladrey Follow-up Response Status – Implemented</p> <p>McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
Prepared by the Office of the Chief Auditor

| Observation #12 – Applications for Payment to the Construction Manager | | | |
|---|---|---|---|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the Agreement between Owner and Construction Manager, Article 8 Payments to the Construction Manager, we identified areas for improvement to the requirements of the payment application process.</p> | <p>We recommend OFC amend the contract to include language that requires proper support for each pay application including a reconciled job cost report, rights of Owner to withhold, requirement of the Construction Manager to pay the Subcontractors within 7 days of receipt of payment from Owner, and certain conditions to be met before final payment is released. Incorporating these best practices into the contract will ensure that the expectations of the Owner are clearly communicated to the Construction Manager, and will allow the Owner to contractually require desired processes.</p> <p>Please refer to Observations #29 & 30 for additional information, and our redlined contract template to see our suggested wording changes.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation.</p> <p>ECD: January 2013</p> <p>Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Section 8.1.8, 8.1.9 and 8.13 of the CM Contract (See pages 51-53).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The revised CM Agreement has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> |

**Observation #12 –
Applications for Payment to
the Construction Manager,
cont'd.**

**February 2013
McGladrey Follow-up Response
Status – Implemented**

McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.

THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
 Prepared by the Office of the Chief Auditor

| Observation #13 – Construction Manager's Fees | | | |
|--|---|---|--|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the General Conditions of the CM Agreement, Article 25 Construction Manager's Fees, we identified areas for improvement to the language that describes the Construction Manager's Fees (Overhead and Profit Fees).</p> | <p>We recommend OFC amend the contract to calculate CM Fees based on a percentage of Cost of Work, rather than negotiating a lump sum in the GMP and allowing for adjustments under certain circumstances. These fees should be negotiated at the time of the GMP, not at the execution of the Construction Contract.</p> <p>By making the CM fees a product of a well-defined cost of work, the Owner can avoid possible contention in negotiation of fees during the construction phase of a project.</p> <p>Please refer to our redlined contract template to see our suggested wording changes, and Cost Avoidance Observation #1 (Parkway and Walker) which outlines how the OFC can avoid potential costs of \$810,000 on future comparable projects.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation.</p> <p>ECD: January 2013</p> <p>Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Article 25.1 of the CM General Conditions of the Contract (See page 61).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The revised CM Agreement has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> |

**Observation #13 –
Construction Manager's
Fees, cont'd.**

February 2013

**McGladrey Follow-up Response
Status - Implemented**

McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.

THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
 Prepared by the Office of the Chief Auditor

| Observation #14 – Cost of the Project | | | |
|---|--|---|--|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the General Conditions of the CM Agreement, Article 26 Cost of the Project, we identified areas for improvement to the language that describes the Cost of the Project.</p> | <p>We recommend OFC amend the contract to expand the definition of the Cost of the Project by including language defining how to price CM-owned equipment, defining how to account for scrap and cash discounts and third party equipment rentals, requiring rent-to-own analyses, limiting cell phone and travel expenses, and defining what types of labor-related expenses are reimbursable. OFC should also amend the contract to exclude certain items from the Cost of the Project such as discretionary fringe benefits, overtime charges not previously approved by Owner, costs outside of industry benchmarks and expenses due to negligence or misconduct. Please refer to our redlined contract template to see our suggested wording changes.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation. ECD: January 2013 Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Article 26.2.02, 26.2.04, 26.2.05, and 25.2.01 of the CM General Conditions of the Contract (See pages 61-65).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The revised CM Agreement has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> |

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| <p>Observation #14 – Cost of the Project, cont'd.</p> | | | <p>February 2013 McGladrey Follow-up Response Status - Implemented McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
Prepared by the Office of the Chief Auditor

| Observation #15 – Change Orders, Extra Work and Claims | | | |
|---|--|---|---|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the following contract templates used by F&CM:</p> <ul style="list-style-type: none"> ▪ General Conditions of the CM Agreement, Article 27 Change Orders and Construction Change Directives ▪ Design Build, Document 00700, General Conditions of the Contract, Article 35 Change Orders <p>We identified areas for improvement in the language defining and pricing changes in the work.</p> | <p>We recommend F&CM amend the contract to expand the language defining the cost of a change. These amendments should outline the specifics regarding each available method for computing a change order, address how to calculate markup for each available method and include specific markup limitations for all contractor tiers. Please refer to our redlined contract template to see our suggested wording changes.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation. ECD: January 2013 Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Exhibit C of the CM Contract (See page 66).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The revised CM Agreement has not been used, as the Office of Facilities & Construction has not awarded any new projects.</p> |

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|---|--|---|
| <p>Observation #15 – Change Orders, Extra Work and Claims, cont'd.</p> | | <p>February 2013 McGladrey Follow-up Response Status - Implemented McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.</p> |
|---|--|---|

THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
 Prepared by the Office of the Chief Auditor

| Observation #16 – Right to Audit Provisions | | | |
|---|---|---|---|
| Observation | Recommendation | Original Management Response | Current Status |
| <p>We reviewed the following construction contract templates used by OFC:</p> <ul style="list-style-type: none"> • General Conditions of the CM Agreement, Article 44 Right to Audit Provisions • Design Build, Document 00700, General Conditions of the Contract, Article 46 Right to Audit Provisions • Agreement for Open End Services, Article 9.3.1 Project Consultant's Accounting Records and Right to Audit Provisions <p>We identified areas for improvement in the language addressing the details of the Owner's Right to Audit. The lack of a strong Right to Audit clause can result in:</p> <ul style="list-style-type: none"> • Refusal to provide certain documents • Limitations in the breadth and scope of what is auditable • Incurrence of unnecessary and excessive expenses | <p>We recommend OFC amend the contract to include language that more clearly defines what is an auditable record, who is bound by the right to audit clause, and include a clause that requires the Construction Manager to pay for audit fees should the audit reveal findings over a threshold amount. Please refer to our redlined contract template to see our suggested wording changes.</p> | <p>June 2012 F&CM will evaluate the recommended contractual modifications in consultation with legal counsel to determine feasibility of implementation.</p> <p>ECD: January 2013</p> <p>Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Article 44 of the General Conditions of the CM Contract (See pages 67-68).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The new process of separating the salary and fringe category has not been used, as the specific contracts are pending Board approval.</p> |

Observation #16 – Right to Audit Provisions, cont'd.

**February 2013
McGladrey Follow-up Response
Status - Implemented**

McGladrey performed a detailed review of the proposed redline contract including any modifications made by Facilities Management. The recommended redline language proposed by McGladrey as a part of this observation has been appropriately incorporated into the applicable contract template for future use and submitted to and deemed acceptable by General Counsel.

THE SCHOOL BOARD OF BROWARD COUNTY
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| Observation #21 – General Conditions and Labor Negotiations | | | |
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| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review we noted that for both Parkway Middle School and Walker Elementary School, the development of the GMP process included a lump sum negotiation of General Conditions and Labor (Construction Phase Fee). Based on our discussions with Contracts and Cost Estimation no supporting schedules outlining what made up these sums are obtained or reviewed for reasonableness or accuracy by F&CM. In addition, by negotiating general conditions as a lump sum, the owner does not share in any savings. One of the significant benefits of a cost plus fee contract, as was used for these projects, is that the Owner can and should require the CM to provide a detailed breakdown of the actual cost estimate for General Conditions and Labor. These estimates can be reviewed by the Owner and then approved as a not-to-exceed amount in the GMP, rather than a lump sum. This process is consistent with Industry practice and our own experience in reviewing</p> | <p>In association with Observation #12 above, we recommend F&CM obtain from the CM, a detailed breakdown of General Conditions, Labor, and Labor Burden. This information should be reviewed in detail by F&CM to assess for reasonableness, contractual compliance and accuracy. Once an appropriate evaluation has been performed, this breakdown should be negotiated as a not-to-exceed balance, subject to reimbursement at actual cost during the course of the project. Potential cost avoidance has been computed in the Cost Avoidance section of this report for the Parkway and Walker projects in an effort to quantify the future potential benefit obtained by F&CM on comparable projects if this recommendation is implemented. Due to the significant potential for overpayments as a result of this form of negotiation (as evidenced by Cost Avoidance Observations #3 for Parkway and Walker below, which note approximately \$590,000 of</p> | <p>June 2012 F&CM agrees with the recommendation. ECD: Immediately Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Follow-up Response Status – Complete Observation No. 21 related to General Conditions and Labor Negotiations, this observation/recommendation was not adopted by management. Management chose to maintain a lump sum approach to General Conditions, rather than a reimbursable expense. The Office of the Chief Auditor and RSM (formerly McGladrey) recommended the reimbursable method to General Conditions. The District began using the revised CM@Risk contract in November 2016.</p> <p>June 2017 OF&C Management Response CM Contract has lump sum GCs that are supported with a complete breakdown and negotiated per Article 25 of the General Conditions of the Contract (See pages 61-62).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> |

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| <p>Observation #21 – General Conditions and Labor Negotiations, cont'd.</p> <p>numerous CM at risk contracts, with a GMP. Lack of proper review of this data can result in the following:</p> <ul style="list-style-type: none"> • Payment for General Conditions not incurred by the CM • Payment for Labor at rates greater than actual cost • Excessive Labor Burden rates • Payment for contractually disallowable items | <p>potential cost avoidance), we recommend F&CM review the contract in consultation with its legal counsel to consider if it should exercise the contractual Right to Audit provision. It is our observation that due to the reimbursable nature of a CM at Risk Agreement, and the fact that the contract does not explicitly state the negotiated sums are "fixed", exercising the Right to Audit provision is appropriate and General Conditions / Labor would be auditable under this Article for both the Parkway and Walker projects.</p> | <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response Corresponding Design and Construction Bulletin is attached. The procedure has not been used as the Office of Facilities & Construction has not awarded any new projects. See Exhibit D.</p> <p>February 2013 McGladrey Follow-up Response Status – Implemented In association with Observation #12 above, McGladrey performed a review of the applicable contract redline, noting management has appropriately incorporated this recommendation into their contract template for future use and submitted to and deemed acceptable by General Counsel. In addition, modifications to the current Parameters Negotiation forms were made by Facilities Management to further facilitate the new negotiation criteria. McGladrey inspected the referenced documentation and interviewed relevant process owners. No new GMP contracts have been executed subsequent to our previous report; therefore, we did not observe or inspect the actual application of these procedures.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
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| Observation #22 – Subcontracts – Related Party Identification | | | |
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| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review, we noted that there is no formal policy addressing the identification of subcontractors or materials vendors that are affiliates of, or are a related party to the Construction Manager.</p> <p>The failure to identify a related party relationship between the Construction Manager and a subcontractor or materials supplier can result in:</p> <ul style="list-style-type: none"> • Duplication of fees paid by the Owner • Competitive bidding deficiencies • Negative public reputation as a result of bidding deficiencies | <p>In association with Observation #8 above, we recommend F&CM implement a policy to formally check all subcontractors and material vendors for common ownership or an equity relationship with the Construction Manager.</p> <p>This recommendation can be accomplished by subjecting the subcontractor bid tabulation list and the direct owner purchase vendor listing to a simple search procedure through an online resource (such as corporationwikic).</p> | <p>June 2012 F&CM agrees that a formal policy addressing the identification of subcontractors or materials vendors that are affiliates of, or are a related party to the Construction Manager should be implemented.</p> <p>ECD: Immediately</p> <p>Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Section 3.4.5 of the CM Contract (See page 42).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved. OCA Verified that the contract has been amended pertaining to related party relationships.</p> <p>February 2014 OF&C Management Response The policy has not been used as the Office of Facilities & Construction has not awarded any new projects.</p> |

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| <p>Observation #22 – Subcontracts – Related Party Identification, cont'd.</p> | | | <p>February 2013 McGladrey Follow-up Response Status – Implemented</p> <p>In association with Observation #8 above, McGladrey performed a review of the applicable contract redline, noting management has appropriately incorporated this recommendation into their contract template for future use and submitted to and approved by General Counsel. No new GMP contracts have been executed subsequent to our previous report; therefore, we did not observe or inspect the actual application of these procedures.</p> |
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| Observation #23 – Subcontracts – Bid Tabulation Review & Buyout Reconciliation | | | |
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| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of the selected projects, we noted that there was no written documentation to indicate that the subcontractor bid packages and / or subcontractor bid tabulations were reviewed by F&CM. Project Management stated that their presence at the bid openings were sufficient to preclude any errors or deficiencies in the process. Lack of proper review procedures and documentation around the CM's selection of subcontractors may result in the following:</p> <ul style="list-style-type: none"> • Selection of subcontractors that F&CM has had problems within previous dealings (financial viability, work performance etc.) • Potential Bid-rigging – CM controls the specifications and scoping information, preventing equal opportunity bidding • Inability to accurately, independently track buyout savings • Competitive Bid P & P / FS Statutes • Negative public reputation | <p>In association with Observations #9 & 10 above, we recommend F&CM implement a policy which includes the following:</p> <ul style="list-style-type: none"> • Written approval of subcontractor bid tabulation sheets • Formal, independent reconciliation of bid tabulation sheets with the GMP • Formal, independent reconciliation of bid tabulation sheets with awarded subcontracts • Contractual requirements as outlined in Observations #9 & 10 | <p>June 2012 F&CM agrees that best practices should be implemented to avoid excess costs by reviewing, tabulating, and confirming award to the low bidder. Implementation of this process will necessitate either additional staff or outsourcing.</p> <p>ECD: Immediately</p> <p>Responsible Party: Executive Director, Facilities Design and Construction, and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Section 3.4.5 of the CM Contract (See page 42).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The revised CM Agreement has not been used as the Office of Facilities & Construction has not awarded any new projects.</p> |

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| <p>Observation #23 – Subcontracts – Bid Tabulation Review & Buyout Reconciliation</p> <p>as a result of bidding deficiencies Violation of District Policy and the Florida Statutes regarding the competitive bid process – lowest responsive bidder is not chosen.</p> | | | <p>February 2013 McGladrey Follow-up Response Status – Implemented</p> <p>In association with Observations #9 & 10 above, McGladrey performed a review of the applicable contract redline, noting management has appropriately incorporated this recommendation into their contract template for future use and submitted to and deemed acceptable by General Counsel. No new GMP's have been executed subsequent the implementation of this recommendation; therefore, we did not observe or inspect actual application of these procedures.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
Prepared by the Office of the Chief Auditor

| Observation #24 – Project Procurement Schedules | | | |
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| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review, we noted that project materials procurement schedules are not developed to establish the timeline for the procurement required to ensure on time project delivery. Project Managers currently address materials procurement (according to F&CM policy) through project meetings but do not require the referenced schedules from the Construction Manager. Lack of written procurement schedules can lead to critical schedule delays and increased project costs.</p> | <p>We recommend that project management request from the contractor, a material procurement schedule in addition to the critical path as another means of ensuring timely delivery of services. This schedule will provide the project manager with another tool for evaluating lead times and the resulting effect on the critical path of the project should a materials purchase be delayed.</p> | <p>June 2012 F&CM agrees with the recommendation. ECD: Immediately Responsible Party: Executive Director, Facilities Design and Construction</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Article 10 of the General Conditions of the CM Contract (See page 69).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The new process has not been used as the Office of Facilities & Construction has not awarded any CM projects.</p> |

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| <p>Observation #24 – Project Procurement Schedules, cont'd.</p> | | | <p>February 2013 McGladrey Follow-up Response Status – Implemented Facilities Management has modified their construction contract to require materials procurement issues and scheduling be addressed by the Construction Manager through the monthly narrative report. McGladrey performed a review of the applicable contract redline, noting management has appropriately incorporated this recommendation into their contract template for future use and submitted to and deemed acceptable by General Counsel. No new GMP contracts have been executed subsequent to our previous report; therefore, we did not observe or inspect the actual application of these procedures.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
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Prepared by the Office of the Chief Auditor

| Observation #34 – Construction Manager's Fee on Change Orders | | | |
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| Observation | Recommendation | Original Management Response | Current Status |
| <p>During our review of change orders and F&CM's construction contracts, we noted the Construction Manager's fee (and bond) percentage applied to change orders was 12% and 10% for Parkway and Walker, respectively.</p> <p>Allowing for a larger fee on change orders than what was negotiated for Overhead & Profit in the original GMP may incentivize the CM to withhold items from the GMP and present them later by change order. In this case, F&CM did not negotiate Overhead & Profit as a percentage in the GMP, but as indicated in the Cost Avoidance section of this report, effective CM fees were found to be below the contractual change order markup percentages noted above.</p> | <p>We recommend that F&CM limit Construction Manager's fee on change orders to that of the percentage negotiated for Construction Manager's fee on the project as a whole. We also recommend that bonds and insurance for change orders be billed at actual cost, not as a percentage of the change order.</p> <p>These recommendations coincide with Observation #14 above, and have been quantified in the Potential Cost Avoidance section below.</p> | <p>June 2012 F&CM agrees that in today's market lower rates may apply. During negotiations of the subject contracts the market demanded higher rates.</p> <p>ECD: Immediately</p> <p>Responsible Party: Executive Director, Facilities Design and Construction and Manager, Design and Construction Contracts</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response Item is complete - see Exhibit C of the CM Contract (See page 66).</p> <p>April 2015 OCA Follow-up Response Status – Ongoing Based on the fact that McGladrey reviewed and recommended changes to the CM@Risk contract, OCA recommends that OFC have the revised contract approved by the Board.</p> <p>April 2015 OF&C Management Response No. At this time, the District is not utilizing CM@Risk as a delivery method, therefore, seeking Board approval of the CM@Risk agreement is not a priority of OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing On two occasions, this contract was withdrawn from the Board agenda. As of the date of this report, it has not been approved.</p> <p>February 2014 OF&C Management Response The policy has not been used, as the Office of Facilities & Construction has not executed any new GMP contracts.</p> |

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| <p>Observation #34 – Construction Manager's Fee on Change Orders, cont'd.</p> | | | <p>February 2013 McGladrey Follow-up Response Status – Implemented</p> <p>In association with Observation #13 above, McGladrey performed a review of the applicable contract redline, noting management has appropriately incorporated this recommendation into their contract template for future use. Facilities Management has also developed new procedures for approving change orders, which include CM fee review. McGladrey performed a review of the documented procedures and interviewed relevant process owners.</p> <p>No new GMP contracts have been executed subsequent to our previous report; therefore, we did not observe or inspect the actual application of these procedures.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
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Prepared by the Office of the Chief Auditor

| Observation #39 – Field Mobility Device | | | |
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| Observation | Recommendation | Original Management Response | Current Status |
| <p>During interviews with Facilities and Construction Management, it was communicated that inefficiencies exist in overall project management due to the lack of proper field / site information technology hardware.</p> | <p>We recommend OFC consider the implementation of iPads or another form of tablet device for Project Management team members (resources permitting). Through our procedures we have been able to determine that OFC's current project management software (Prolog) supports compatibility with tablet devices such as the iPad. Through the use of this device, Project Managers can save time by not having to return to their office to obtain job information and they can maintain better communications on site by having instant access to drawings, emails and other relevant job data. This Observation should be considered in conjunction with Observation #40 below.</p> | <p>June 2012 F&CM agrees with the recommendation.</p> <p>ECD: Tentative based on budget</p> <p>Responsible Party: Deputy Superintendent, Facilities and Construction Management</p> | <p>June 2017 OCA Status – Not Applicable</p> <p>June 2017 OF&C Management Response The system that was in place at the time of the audit has been changed and Facilities and Construction Project Managers are no longer managing projects directly. However, we are reviewing the use of tablets by the Owner's Representative in conjunction with e-Builder implementation.</p> <p>April 2015 OCA Follow-up Response Status – Ongoing</p> <p>April 2015 OF&C Management Response No specific request has been made, however, technology needs for OFC are being reviewed comprehensively by OFC and Information Technology.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing</p> <p>February 2014 OF&C Management Response The Office of Facilities & Construction has requested 4 tablets for use in the field. The request is pending approval.</p> |

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| <p>Observation #39 – Field Mobility Device, cont'd.</p> | | | <p>February 2013 McGladrey Follow-up Response Status – Ongoing The implementation of this recommendation is subject to funding limitations.</p> <p>February 2013 OF&C management Response Staff shall be presenting a budget proposal in the future.</p> |
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THE SCHOOL BOARD OF BROWARD COUNTY
Current Status Update of the McGladrey, LLP Operational Review of the Office of Facilities and Construction
Prepared by the Office of the Chief Auditor

| Observation #40 – Project Management Software Training | | | |
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| Observation | Recommendation | Original Management Response | Current Status |
| <p>During interviews with Facilities and Construction Management, we identified apparent inefficiencies in the project management process due to the lack of integration between F&CM's primary project management software (Prolog) and other software (specifically MS Word).</p> | <p>Through our research and discussions with the team at Meridian Systems (Prolog), they indicated that their system is compatible with the referenced software in the Microsoft Office Suite and that MS Word template integration can be obtained as a part of their service.</p> <p>Meridian Systems indicated that the implementation and integration of tablets (iPad) into their current Prolog system is achievable and that they offer training services related to the use of their software in this capacity. Prolog is the leading information technology project management tool on the market and in that light, we recommend that F&CM contact Meridian Systems to address current integration concerns as well as to discuss the implementation of a tablet-based field mobility system.</p> <p>This Observation should be considered in conjunction with Observation #39 above.</p> | <p>June 2012 F&CM agrees with the recommendation.</p> <p>ECD: Tentative based on budget</p> <p>Responsible Party: Deputy Superintendent, Facilities and Construction Management</p> | <p>June 2017 OCA Status – Complete</p> <p>June 2017 OF&C Management Response e-Builder has been implemented as the Project Management Information System for the current program.</p> <p>April 2015 OCA Follow-up Response Status – Ongoing</p> <p>April 2015 OF&C Management Response Not at this time. Training will be scheduled in accordance with the technology plan for OFC.</p> <p>February 2014 OCA Follow-up Response Status - Ongoing</p> <p>February 2014 OF&C Management Response Appropriate software is being evaluated and training will be conducted upon selection and implementation.</p> <p>February 2013 McGladrey Follow-up Response Status – Ongoing The implementation of this recommendation is subject to funding limitations.</p> <p>February 2013 OF&C Management Response Staff shall be presenting a budget proposal in the future.</p> |

**SECTION II
EXHIBITS**

CONSTRUCTION SERVICES AGREEMENT

BETWEEN

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

AND

CONSTRUCTION MANAGER

FOR

CONSTRUCTION MANAGEMENT AT RISK SERVICES

PROJECT NO: P.001683

PROJECT NAME AND LOCATION: Stranahan High School
1800 SW 5th Pl,
Location No. 0211
Fort Lauderdale, FL 33312

CONSTRUCTION MANAGER: Gilbane Building Company,
StateCorp: Rhode Island
661 University Blvd- Ste 107
Jupiter, FL 33458
Phone: 561-223-4710 Fax: 561-223-4689

PROJECT CONSULTANT: Wolfberg Alvarez & Partners, Inc.
3225 Aviation Avenue, Suite 400
Miami, FL 33133
Phone: 305-666-5474

FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made and entered into this first day of November in the year 2016 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as **Owner**) and

Gilbane Building Company,
661 University Blvd- Ste 107
Jupiter, FL 33458
Phone: 561-223-4710
Fax: 561-223-4689
Federal Employer Identification Number (FEIN) : 05-0495530
State of Incorporation: Rhode Island

(hereinafter referred to as **“Construction Manager”**)

WHEREAS, Owner is the owner of certain real property located in Broward County and Owner desires to have:

Renovation and repair scope associated with RFQ 16-206C.
P.001683
at
Stranahan High School

constructed pursuant to drawings, specifications and other contract documents prepared by or to be prepared by,

Wolfberg Alvarez & Partners, Inc.

(hereinafter referred to as Project Consultant).

WHEREAS, the Construction Manager is desirous of performing the Work in accordance with the Contract Documents and all applicable laws, codes and ordinances.

NOW THEREFORE, in exchange for the mutual covenants and promises set forth herein and the sums of money agreed to be paid by the Owner to Construction Manager, the parties agree as follows:

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EXHIBITS

- A. GMP Amendment Form
- B. Compensation
- C. CM Firm's Proposal
- D. SBBC RFQ Documents

ARTICLE I THE PROJECT CONSTRUCTION TEAM AND ENTIRE AGREEMENT

- 1.1 The Construction Manager (CM) accepts the relationship of trust and confidence established between it and the Owner by this Agreement. It covenants with the Owner to furnish its best skill and judgment and to cooperate with the Project Consultant in furthering the interests of the Owner. It agrees to furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.
- 1.2 The Project Construction Team - The Construction Manager, the Owner, Owner's Representative and the Project Consultant, called the Project Construction Team, shall work jointly during design and through the completion of the warranty phase and shall be available thereafter should additional services be required.. The specific representatives of the Construction Team are shown in Exhibit A attached to the General Conditions.
- 1.3 Entire Agreement - This Agreement between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements with respect to the project. When drawings, specifications and other descriptive documents defining the Work to be included in the Guaranteed Maximum Price (GMP) is completed pursuant to Article 6, an Addendum to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. When drawings, specifications and other descriptive documents defining the Work to be included under a Notice to Proceed are completed pursuant to Article 6 , they shall be identified in the Notice to Proceed issued by the Project Manager. To expedite the preparation of this GMP Addendum by the Owner, the Construction Manager shall obtain three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based from the Project Consultant. The Construction Manager shall acknowledge, by signature, on the face of each document of each set that it is the set upon which the Construction Manager based the GMP and shall send one set of the documents to the Owner's Project Manager along with his GMP proposal, while keeping one set for himself and returning one set to the Project Consultant.
- 1.4 Contract Documents - The Contract Documents, which constitute the entire agreement between Owner and Construction Manager, consist of the CMAR Agreement Form and all exhibits thereto, the Proposal and all attachments and supporting documentation submitted by the Construction Manager in response to the Request for Qualifications/Proposals, requirements pursuant to Chapter 287, Florida Statutes on Public Entity Crimes, these General Conditions, all Addenda, and the Project Consultant's Agreement with the SBBC. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those listed above, those identified by the GMP Amendment and the Design Documents attached thereto, including but not limited to the Project Manual, Drawings, Specifications, any other General and Supplementary Conditions (Divisions 0 and 1), and all modifications issued after execution of the Contract. These documents embody the entire agreement between Owner and Construction Manager and supersede 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 Agreement shall

be valid unless reduced to a written instrument and signed by both parties.

ARTICLE 2 THE WORK

- 2.1 The Construction Manager shall perform all of the Work required by this Agreement and the Contract Documents specified in the General Conditions and shall provide materials, supplies, tools, equipment, labor and services directly related to the Work. The CM shall perform the Work in a good and workmanlike manner with sufficient manpower to meet the time and quality requirements set forth in the Contract Documents, and shall provide and perform all other work and services necessary to complete the Work in strict accordance with the Contract Documents.
- 2.2 When completed, the Work shall conform to the requirements of the Contract Documents and be ready for Substantial Completion and Final Completion.
- 2.3 The Construction Manager represents and warrants to the Owner that:
 - .1 It is financially solvent and has sufficient working capital to perform its obligations under this Construction Contract;
 - .2 It is experienced and skilled in the construction of the type of project described in the Contract Documents;
 - .3 It is able to provide the labor, materials, services, equipment and machinery necessary to complete the Work for the agreed upon price;
 - .4 It is fully licensed under all applicable laws and authorized to do business as a General Contractor in the State of Florida in the name of the entity identified as the "Construction Manager" in the Construction Contract;
 - .5 It has visited the jobsite and examined its nature and location, prior to submission of the GMP, including without limitation: the surface conditions of the site and any structure or obstruction both natural or man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings as provided by the Owner and the location of electric and utility lines and water, sanitary, sewer and storm drain lines as provided by the Owner. The Construction Manager acknowledges receipt and has reviewed the site geotechnical report provided by the Owner.
 - .6 It will comply with all federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents; where a conflict exists between any laws and/or regulation, the most stringent shall apply.
 - .7 It will comply with the Workforce Composition requirements, M/WBE program goals, and submit and comply with the Certificate of Intent requirements.
 - .8 It will review the Consultant's Design and Construction documents and provide comments in accordance with contract requirements.

ARTICLE 3 CONSTRUCTION MANAGER'S SERVICES

- 3.1 The services of the Construction Manager shall include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The Construction Manager shall also comply with all requirements of the Florida Building Code (FBC), Florida Fire Prevention Code (FFPC), State Requirements for Educational Facilities (SREF), the Florida K-20 School Code, and any other applicable codes, regulations and procedures that are in effect as of the date the building permit(s) is issued.
- .1 Notwithstanding any other provisions of this Agreement to the contrary, any substantially affected person may appeal any building code dispute or interpretation of the Chief Building Official of the School Board of Broward County, Florida to the Florida Building Commission as set forth in Florida Statute 1013.37(2005) and the Florida Building Code, as amended.
- 3.2 **GENERAL (Part of Preconstruction Phase)**
- .1 The Construction Manager shall review project requirements, educational specifications, on and off-site development, survey requirements, preliminary budget, and make value engineering and constructability recommendations for revisions to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .2 The Construction Manager shall, subject to Owner's approval and compliance with existing Owner completion schedule, establish a preliminary master project schedule identifying all phases, Critical Path elements, responsibilities of the Owner, Project Consultant, outside agencies, third parties and any other impacts which would affect project schedule and progress and update them monthly throughout the duration of the contract.
- .3 Where the project includes renovation or expansion of an existing Facility, the Construction Manager will assist the Construction Team in preparing an analysis package outlining the condition of the existing Facility, existing structure, existing finishes, and existing equipment, code deficiencies, energy use, and life expectancy of other building systems by providing constructability, value engineering and cost estimates recommendations. The package should contain the Construction Managers recommendations, cost estimates and preliminary schedules. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .4 Not Used
- .5 The Construction Manager shall provide project delivery options for the design, bid, and bid packaging of the project for efficient scheduling, cost control and financial resource management. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .6 The Construction Manager shall utilize information and reporting systems to provide the Owner with monthly reports containing accurate and current cost controls, work status, including but not limited to Work narrative, Work completed/anticipated, short term and long term schedules estimated expenditures, and project accounting systems of the project at all times. Such information shall be provided to the Owner and Project Consultant in the form of

a written report, prior to final payment for this phase.

- .7 The Construction Manager shall prepare a report with the Project Team's participation which shall describe, as a minimum, the Work plan, job responsibilities, and written procedures for reports, meetings, inspections, changes to the project, building systems and delivery analysis and other relevant matters. Such information shall be provided to the Owner and Project Consultant prior to final payment for this phase.
- .8 The Construction Manager shall provide market analysis and motivation for subcontractor interest and recommendations for minority business participation. This shall include analysis of the Construction Manager's historical data for subcontracting, communication with contractor and trade organizations requesting participation, review of the Owner's M/WBE data, advertising, outreach programs, mailings to all prospective bidders identified by these actions, and reporting of all of the forgoing to the Owner, Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .9 The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit B of the General Conditions. All required reports and documentation shall be submitted and approved by the Owner as pre-requisite to progress payments to the Construction Manager by the Owner during this phase.

3.3 **DESIGN PHASE (Part of Preconstruction Phase)**

- .1 The Construction Manager will be required to attend all project related meetings and include a summary of the meeting in its monthly report to the Owner as specified in Specification 01310.
- .2 The Construction Manager will periodically review all Contract Documents for constructability and to help ensure compliance with all applicable laws, rules, codes, design standards, and ordinances. Construction Manager shall immediately notify Owner of any non-compliant Contract Document. Such information shall be provided to the Owner and Project Consultant in the form of a written report in format as noted herein prior to final payment for this phase.
- .3 The Construction Manager's services shall be rendered compatibly and in cooperation with the Project Consultant's services under the Owner's Agreement with the Project Consultant. The Construction Manager will be required to maintain a working relationship with and coordinate their activities with the Project Consultant and any additional consultants, testing labs and others that Owner designates for the project and report all findings as specified in Specification 01310.
- .4 The Construction Manager shall prepare detailed cost estimates and recommendations to Owner and Project Consultant at S.D., (Schematic Design), D.D (Design Development) C.D. (50% and 100% Construction Documents) phases of the project. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for each phase.
- .5 The Construction Manager shall review all Contract Documents for the new and existing

buildings and/or building sites and provide value engineering recommendations to minimize the Owner's capital outlay and maximize the Owner's operational resources. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase. All such recommendations shall be acknowledged and reviewed for incorporated into the construction documents by the Project Consultant once authorized by the Owner in writing.

- .6 The Construction Manager will review all Contract Documents, all new and existing buildings' conditions and the building site to ensure proper coordination, constructability, clarity and completeness, and to minimize conflict, errors, omissions and unforeseen conditions. The Construction Manager shall coordinate with the Project Consultant to eliminate change orders due to errors, omissions and unforeseen conditions. The Construction Manager agrees specifically that no Change Orders shall be requested by the Construction Manager or considered by the Owner for reasons that were or should have reasonably been known by to the Construction Manager involving unforeseen conditions, conflicts or questions of clarity in the Contract Documents, or between the Contract Documents and the existing conditions, utilities, and unforeseen underground conditions.
- .7 The Construction Manager shall periodically update the master project schedule and make recommendations for recovery of lost time. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .8 The Construction Manager will coordinate with the Project Consultant and provide to the Project Construction Team permitting applications and requirements for the projects. The Construction Manager will periodically update cost estimates and make recommendations to keep the project within the target budget.
- .9 At completion of the Construction Manager's review of the plans and specifications, except only as to specific matters as may be identified by appropriate written comments pursuant to this section, the Construction Manager, without assuming the project consultant's responsibilities, shall notify owner in writing that the plans and specifications are consistent, practical, feasible and constructible and that the work described in the plans and specifications for the various bidding packages is constructible within the scheduled construction time.
- .10 **DISCLAIMER OF WARRANTY: THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT, CONSTRUCTIBLE OR WITHOUT DEFECT.**
- .11 The Owner may select certain projects for expediting using fast-track construction. When this option is exercised, in writing, by SBBC, it shall be implemented in accordance with the following;
 - A. Design/Construction documents as noted herein shall be submitted by the Consultant for review and approval by SBBC (including Building Code review and Building permit issuance for 100% completion documents) the Construction Manager and others, as applicable, having jurisdiction;
 1. Foundation / Structural / LCCA / Site and Off-Site Package – 100% Documents
 - (a) A separate 50% completion progress set (for information only) of Building Finish Package drawings shall also be submitted which shall show all of the major characteristics of the project utilities and service, detailed site and floor

- plans, elevations, sections, schedules, etc.
- (b) Construction may begin after approvals and building permit is obtained for above package.
- 2. Building Finish Package – 100% Documents
- 3. As mutually agreed by the parties in writing.

3.4 **BIDDING AND AWARD PHASE (Part of Preconstruction Phase)**

- .1 Upon obtaining all necessary approvals of the Construction Documents, including a Building Permit as required by the FBC and Owner approval of the latest Statement of Probable Construction Cost, the Construction Manager shall obtain bids and commence awarding construction contracts. The Owner will have the drawings and specifications printed for bidding purposes, either through its open Agreements with printing firms or as a reimbursable service through the Project Consultant, or as set forth in Article 26.03.07 in the General Conditions.
- .2 The Construction Manager shall review the Owner's records of pre-qualified contractors, including Minority/Women Business Enterprises (M/WBEs), and prepare a list of those recommended for work pursuant to this contract. The Owner reserves the right to reject any or all subcontractors recommended for approval. The Construction Manager shall maintain a list of all potential bidders, including M/WBEs and those who are approved as pre-qualified.
- .3 The Construction Manager shall prepare and issue the bid packages to cover the scope of the Work for this contract.
- .4 The Construction Manager, in coordination with the Owner, shall schedule pre-bid conferences as required and issue a written summary of the conference(s).
- .5 The Construction Manager and Owner shall jointly open, at a mutually agreed SBBC location, and evaluate at least three bids, if possible, for each portion of the Work solicited. The Construction Manager shall also make recommendations to the Owner for award to the lowest, responsive, and responsible bidder. A recommendation for award to other than the lowest bidder shall be justified in writing. Construction Manager will disclose any related party relationship in a bidding subcontractor in writing prior to the award of contracts. For the purposes of this agreement, a related party relationship shall constitute any instance of common ownership, common management, or an ownership stake in the bidding subcontractor. The Construction Manager is required to present the bid tabulation summary and all supporting bid day documentation to the Owner after the bid opening. The referenced documentation as well as the awarding of any subcontracts is subject to the written approval of the Owner. The Construction Manager is not authorized to enter into any subcontract agreements without first obtaining written approval for each subcontractor.
- .7 Guaranteed Maximum Price (GMP): Upon completion of the design phase [construction documents 100% complete] and bidding, the Construction Manager shall present to the Owner the GMP for the Owners review and approval in accordance with Article 6 of this Agreement.
- .8 At the time of the submission of the documents referenced in Article 3.4.5, the Construction Manager is required to submit, in writing, a buyout reconciliation of all subcontracts that have been awarded as a product of the initial bid opening date. The result of this reconciliation is to be presented in association with a modified schedule of values reflecting the net buyout

adjustment in the Owner Savings / Buyout line on the schedule of values. Any un-awarded values remaining in the GMP shall continue to be carried at their estimated amounts until a subcontract is awarded and adjusted in accordance with Article 6.1 of this agreement.

- .9 Should the Construction Manager desire to submit a bid to self-perform any of the portions of the Work, this intention must be clearly conveyed to the Owner prior to the receipt of any other bids for the same scope of work. All bids to be received for this portion of the Work must be submitted directly to the Owner who will then open and evaluate at bid opening.

3.5 CONSTRUCTION PHASE (Part of Post-GMP Construction Phase)

- .1 The Construction Manager shall fully comply with the provision of the Owner's Project Manual, including but not limited to Division 0 and 1, and the attached General Conditions. In the event of a conflict between this Agreement and such documents the agreement shall control.
- .2 The Construction Manager shall provide the minimum staffing level as set forth in Exhibit B of the General Conditions for this project:
- .3 The Construction Manager shall maintain and prepare monthly updates for all project schedules, including Critical Path elements, provide written progress reports, describe problems and corrective action plan(s) and conduct briefings as required by the Owner. Such information shall be provided to the Owner and Project Consultant in the form of a written report with progress payments requests.
- .4 Subject to Article 3.4.8, the Construction Manager may self-perform certain construction work when it benefits the Owner, results in cost and time savings, and is pre-approved by the Owner in writing.
- .5 The Construction Manager shall coordinate project close-out, operation, and transition to occupancy.
- .6 The Construction Manager shall coordinate with the Project Consultant to provide complete project records including project manual, and electronic Computer Assisted Drafting (CAD) drawings corrected to show all construction changes, additions, and deletions. (Construction Manager shall note all changes on the as-builts for the Project Consultant to reflect on the drawings and CAD disc.)
- .7 The Construction Manager shall coordinate with the Owner's staff to prepare the Certificate of Final Inspection.
- .8 The Construction Manager shall obtain and review all warranties, operations and maintenance manuals and other such documents, for completeness, have them corrected if necessary and submit them to the Owner.
- .9 The Construction Manager shall complete all punch list items generated by the Building Code Inspector (BCI), the Owner, the Project Consultant and any others having jurisdiction over the project, during its inspections.
- .10 If at any time during the course of the Project, Owner determines that the performance of any

Subcontractor, member of the Project Team or other member of Construction Manager's staff working on the Project is unsatisfactory, Owner can require Construction Manager to remove such person or entity from the Project immediately and replace such person or entity. Replacements of members of the Project Team or Construction Manager's staff shall be at no cost or penalty to Owner for delays or inefficiencies the change may cause. Construction Manager shall be entitled to request a Change Order for costs and time associated with the replacement of Subcontractors required by Owner.

- .11 Construction Manager shall exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its Subcontractors on the Project shall work in harmony, and be compatible, with all other labor being used on the Project and representatives of Owner. Construction Manager shall include this provision in all contracts with its Subcontractors, and all Subcontractors shall include such provision in their contracts with sub-subcontractors; 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 guaranteed by Article I, Section 6 of the Florida Constitution.
- .12 No Contractual Relationship. Nothing contained in this Agreement shall create a contractual relationship between Owner and any other person or entity other than Construction Manager.
- .13 Good Order. The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other persons carrying out Construction Manager's obligations under the Contract Documents. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- .14 Liability. Construction Manager shall be responsible to Owner for acts and omissions of Construction Manager's employees, contractors and their subcontractors, agents and employees, and other persons, including, design professionals, performing any portion of Construction Manager's obligations under the Contract Documents.

3.6 WARRANTY PHASE (Part of Post-GMP Construction Phase)

- .1 The Construction Manager shall provide a minimum one (1) year warranty and shall coordinate and supervise the completion of warranty Work during the warranty period. Construction Manager shall participate with the Owner in conducting of warranty inspections held on the sixth (6th) and eleventh (11th) months after occupancy. Construction Manager shall deliver all as-built drawings, warranties and guaranties to the Owner.
- .2 Where any Work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Owner Occupancy of the Project or a designated portion thereof or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of

the Specifications or by Florida Law. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents.

- .3 The Construction Manager shall provide a Warranty Summary Report at the end of the 6-month warranty period and 11-month warranty period. This report shall provide at a minimum;
 - (1) Description of each warranty item during the period.
 - (2) Date item reported to Construction Manager.
 - (3) Date item corrected. If more than one trip required, document each.
 - (4) Description of action taken to cure warranty item.
 - (5) Obtain signature of school principal or designee acknowledging warranty items have been completed.
 - (6) Other pertinent information, if applicable.
- .4 Refusal of the Construction Manager to provide any work required in the Warranty Phase of the project shall be basis for non-payment of any and all Warranty Phase Fee unpaid at the time of refusal.

ARTICLE 4

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 4.1 Prior to commencement of the Construction Phase, the Owner shall issue to the Construction Manager, in writing, a Notice to Proceed (NTP) for the Construction Phase. The NTP shall include a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the master project schedule in accordance with the GMP Addendum. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date and final completion date.

ARTICLE 5

LIQUIDATED DAMAGES

5.1 LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION

- .1 The Construction Manager shall pay the Owner the sum of:

one thousand dollars \$1000 per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth in the contract documents for Substantial Completion of each phase, if phased, or the project, if not phased.
- .2 Owner and Construction Manager acknowledge that any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner as estimated at the time of executing this Contract. If the Owner reasonably believes in its discretion that Substantial Completion will be delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover

liquidated damages applicable to such delays. If and when in the Owner's discretion the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

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

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

5.2 LIQUIDATED DAMAGES FOR FINAL COMPLETION:

- .1 If the Construction Manager fails to achieve final completion within 60 days of the date of Substantial Completion, the Construction Manager shall pay the Owner the sum of:

five hundred dollars \$500 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.

- .2 Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner, as estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.
- .3 Prior to being entitled to receive final payment, and as a condition precedent thereto, the Construction Manager shall provide the Owner, in the form and manner required by Owner, the following:
 - .1 An affidavit that Construction Manager's obligations to all subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
 - .2 Such other documents as required by the Project Manual from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Owner including but not limited to final releases of bond;
 - .3 All product warranties, operating manuals, instruction manuals and other documents customarily required of the Construction Manager or reasonably required by Owner, including but not limited to those required elsewhere in the Contract Documents, as part of its Project Closeout procedures;

ARTICLE 6 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

6.1 The Construction Manager shall submit a written Guaranteed Maximum Price (GMP) for Construction to the Owner when the Construction Documents are 100% complete. Work shall not commence prior to the issuance of a Building Permit by the Chief Building Official. This indicates that all mandatory requirements have been met (defined as Building Department code requirements.) Further, all agreed upon comments from all design phases are required to be incorporated into the drawings at this stage. If design review "approval" is withheld, the documents must be resubmitted. The GMP shall guarantee the maximum price for the construction cost of the project or designated part thereof, for phased projects, and shall be approved by the Owner. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 27 of the General Conditions. However, the actual price paid for the Work by the Owner shall be the actual cost of all Work subcontracts, supply contracts, direct labor costs, **direct supervision costs**, and direct job costs as defined under Article 26 of the General Conditions, plus the Construction Manager's fee or the GMP, **whichever is less when the Work is complete. OWNER SHALL NOT BE LIABLE FOR NOR SHALL IT PAY CONSTRUCTION MANAGER ANY SUMS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE. CONSTRUCTION MANAGER AGREES THAT ANY AND ALL SAVINGS BELONG AND REVERT BACK TO THE OWNER.**

- .1 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Construction Manager's cost of Work. In addition to the cost of Work, the GMP will include an agreed upon sum as the construction contingency which is included for the purpose of accounting for unforeseen increases or decreases in the construction cost at the time bids are received and approved by the Construction Manager and Owner and/or unforeseen circumstances. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. The use of the contingency shall be subject to School Board approval as noted in General Conditions Article 1, Paragraph 1.1.12, if the amount requested exceeds Fifty thousand dollars (\$50,000.00) prior to disbursement to Construction Manager. The use of the contingency where the request does not exceed Fifty thousand dollars (\$50,000.00) shall be subject to the unanimous approval of the Chief Facilities Officer, Director of Construction, Project Manager, and Project Consultant, prior to disbursement to Construction Manager. In the event that there is a disagreement amongst the Construction Manager and the aforementioned staff, the request for use of the contingency shall be determined by the Owner. Documentation for use of the Contingency shall be determined by the Owner, included in the Project Manual and displayed in the monthly applications for payment. The Project Consultant and Owner shall verify actual costs. All Contingency Use Directives (CUDs) arising from the same cause and conditions shall be combined into one (1) CUD whenever possible.
- .2 During the Construction Phase, subsequent to initial buyout procedures conducted in accordance with Article 3.4 of this agreement, an adjustment shall be made by the Construction Manager every month to increase or decrease the Buyout / Owner's Savings line of the schedule of values for subcontracts awarded during the period. This adjustment is to be supported by a reconciliation including any and all supporting documentation required by the Owner to verify its accuracy.

- .3 All uses of the authorized contingency shall be authorized by Contingency Use Directive approved by the Owner before the contingency use is implemented. Any use of Buyout / Owner Savings shall be authorized by Change Order, approved by the School Board and subject to the provisions of this agreement for Change Orders.
- 6.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.
- 6.3 The Construction Manager shall submit the GMP Addendum on the Owner's approved form (Agreement Exhibit A) for approval by The School Board of Broward County, Florida.
- 6.4 **IF THE GMP PROPOSAL IS UNACCEPTABLE TO THE OWNER, OWNER MAY TERMINATE THE CONSTRUCTION MANAGER AS SET FORTH IN ARTICLE 36 OF THE GENERAL CONDITIONS.**

ARTICLE 7 CONSTRUCTION MANAGER'S FEES

- 7.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services, fees as set forth in Agreement Exhibit B. These fees may later be amended through the incorporation of the GMP.
 - .1 Preconstruction Phase - In the case where preconstruction phase fees are agreed upon and the Construction Manager's GMP is not accepted by the Owner and the Agreement is terminated, the Construction Manager shall be entitled to receive only that portion of the preconstruction phase fees representing all Work performed to date relating to the project. The Construction Manager may request payment for that part of the Contract Price allocable to Contract requirements properly provided during the preconstruction phase.
 - .2 Construction Managers fees – will be applied as a percentage of Cost of Work.
 - .3 Costs for Project General Conditions shall be set as a Lump Sum Cost and shall be included in the GMP. See Article 8 for Application for Payment procedures.
 - .4 Fee for Change Orders – In the event that the Owner approves an additive change in the work, the Construction Manager shall receive from the Owner Overhead and Profit, at the percentage of the cost of the work of the change order agreed upon in the GMP. This amount shall be the Construction Manager's exclusive remedy for such changes in the Work. In the event that the Owner approves a deductive change order for a reduction in the scope of work, the Construction Manager shall deduct Overhead and Profit at the percentage of the cost of work deducted in the change order.
- 7.2. Construction Manager's Deliverables
 - .1 General

- .1 Summary Report / Recommendations (Agreement 3.2.1)
 - .2 Preliminary Master Project Schedule and monthly updates (Agreement 3.2.2)
 - .3 Existing Facility Analysis package, recommendations, Cost Estimates (Agreement 3.2.3)
 - .4 Project Delivery options / packaging recommendations report (Agreement, 3.2.5)
 - .5 Work Status Monthly Report (Agreement 3.2.6)
 - .6 Project Manual (Agreement 3.2.7)
 - .7 Market Analysis/sub-contractor report (Agreement, 3.2.8)
- .2 Design Phase
- .1 Monthly Summary of project meetings (Agreement 3.3.1)
 - .2 Document Reviews / report at each phase (Agreement 3.3.2, 3.3.5, 3.3.6).
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
 - .3 Preliminary Master Project Schedule Updates (Agreement 3.3.7)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - .4 Cost Estimates (Agreement, 3.3.4)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
 - .5 Guaranteed Maximum Price (GMP) Manual (Agreement 3.3.12)
- .3 Bidding and Award Phase
- .1 Proposed Subcontractor list with MWBE participation (Agreement 3.4.2).
 - .2 Bid Packages List, Tabulation Sheet, Bid Support (Agreement 3.4.3)
 - .3 Pre-bid conference attendance list and summary report (Agreement, 3.4.4)
 - .4 Recommendations for award (Agreement, 3.4.5)
 - .5 Schedule of Values (Agreement 3.4.7)
 - .6 Buyout Reconciliation (Agreement 3.4.7)
- .4 Construction Phase
- .1 Monthly Schedule updates and reports (Agreement, 3.5.3)
 - .2 Summary of all meetings (Agreement 3.3.1)
 - .3 Preparation and submission of all close-out submittals (Agreement, 3.5.8)
 - .4 Written verification of punchlist items completion, including BCI items (Agreement, 3.5.9)
 - .5 Schedule of Values (Agreement 8.1).
 - .6 Buyout Reconciliation Updates (Agreement 6.1)

- .5 Warranty Phase
 - .1 Warranty Summary Report at end of 6 months (50% of Warranty Phase fee) and 11 months (Balance of Warranty Phase Fee) Warranty Phase (Agreement 3.6.3)
- .6 Other Deliverables
 - .1 Insurance Policies (Agreement 8.1.7)
 - .2 Payment Applications (Agreement 8.2 through 8.14)
 - .3 Agreement Execution and Contract Bonds (Agreement 9.1)
 - .4 Closeout documents as set forth in the Contract Documents.
- .7 Final Payment
 - .1 Payment affidavits, release of lien and other requirements (Agreement 8.15)

ARTICLE 8 PAYMENTS TO THE CONSTRUCTION MANAGER

8.1 Schedule of Values:

- .1 Before the first Application for Payment for the Work, the Construction Manager shall submit to Owner a schedule of values allocated to various portions of the Work. Construction Manager's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner may, at its option, require. Construction Manager shall not front-end load its Schedule of Values and shall not imbalance its Schedule of Values. The allocated value of each item in the Schedule of Values shall only include its total cost. The Schedule of Values shall be used only as a basis for Construction Manager's Applications for Payment and shall only be so used after it has been approved in writing by Owner.
- .2 The Construction Manager shall maintain and update the Schedule of Values originally provided to the Owner with the GMP Addendum, as modified for approved Buyout Savings.
- .3 The Construction Manager's Schedule of Values apportions the GMP among the different elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Contractor's monthly Application for Payment.
- .4 The Schedule of Values shall be presented with such detail, and supported with whatever information the Owner reasonably requests as addressed in Article 8.5 of this Agreement.
- .5 The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof.
- .6 The Construction Manager shall supply a Schedule of Values as reflected in his CPM schedule to the OWNER. The Schedule of Values shall be updated monthly, only to reflect all subcontracts, buyouts, approved change orders and change directives.

- .7 No payments shall be made to the Construction Manager prior to the receipt of all insurance policies that are required by this agreement and the work being performed.
- .8 In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any Application for Payment that (i) Construction Manager have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement, and (ii) Construction Manager shall have furnished to Owner, if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of bond, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Owner, at Owner's discretion, may permit Construction Manager to furnish a bond satisfactory to Owner in lieu of such release or waiver indemnifying Owner against such claim. If such claim remains unsatisfied after payments are made, Construction Manager shall refund to Owner all money that Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.
- .9 Withholding Payment. Owner may appropriately adjust Construction Manager's Applications for Payment if Owner reasonably believes that any portion of the Work has not progressed to the point indicated in Construction Manager's Application for Payment or, the quality of the Work covered is not in accordance with the Contract Documents. In addition, Owner may decide not to pay Construction Manager an appropriate amount because of subsequently discovered evidence or subsequent observations, to the extent necessary to protect itself from loss, because of but not limited to: (i) defective Work of which the Construction Manager has knowledge; (ii) third party claims filed or evidence indicating the filing of such claims; (iii) failure of the Construction Manager to make payments to Subcontractors or others for labor, materials or equipment pursuant to Construction Manager's contracts with such persons or entities; (iv) evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price allocable to the Work; (v) damage to Owner or another contractor, caused by Construction Manager or its subcontractors, and not paid by Construction Manager's insurance; (vi) evidence that the Work will not be completed by the Scheduled Final Completion Date, as the same may be adjusted by Modification and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (vii) persistent failure to carry out the Work in accordance with the Contract Documents.
- 8.2 Prompt Payment Act – Payments to the Construction Manager will be made pursuant to the Contract Documents and the Local Government Prompt Payment Act, Chapter 218, Florida Statutes, and any subsequent amendments thereto ("Prompt Payment Act"). To the extent that the provisions of Contract Documents differ with the requirements of the Prompt Payment Act, the provisions of the Prompt Payment Act will govern.
- 8.3 On or before the 25th day of each month after commencement of performance, but no more frequently than once monthly, the Construction Manager may submit an Application for Payment for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Construction Manager and Owner.

- 8.4 Said Application for Payment shall be in the format required in the Specification 01290 and include whatever supporting information as may be required by the Owner. Except for Applications for Payment for Design Services and pre-construction services, retainage shall be withheld from each monthly payment request, in an amount not to exceed ten percent (10%) of the approved payment. Owner may, in Owner's sole discretion, upon written request of Construction Manager, release portions of the retainage allocable to portions of the Work, which have been finally completed prior to Final Completion for all of the Work. Retainage shall be withheld and released in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act Retainage shall not be withheld on fees as set forth in Article 7.1.
- 8.5 Applications for Payment shall be notarized and supported by such data substantiating Construction Manager's right to payment as Owner may reasonably require. The format of the Application for Payment shall be the American Institute of Architects G702© certified and notarized by the Construction Manager and supported by the American Institute of Architects form G703© which shall agree to the schedule of values as described in this agreement. The Construction Manager's final acceptance of the supportability and allowability of the charges submitted in the applications for payment is not inferred through the approval and signature of each monthly pay application that includes the referenced charges.
- 8.6 Each Application for Payment shall be signed by the Construction Manager and shall constitute the Construction Manager's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the requirements of the Contract Documents, that the costs being billed have actually been incurred and that the Construction Manager knows of no reason why payment should not be made as requested. CONSTRUCTION MANAGER SHALL NOT FRONT-END LOAD ITS SCHEDULE OF VALUES BY IMBALANCING IT OR BY INCREASING ANY ELEMENT THEREOF IN EXCESS OF THE ACTUAL COST, AND SUCH ACTS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.
- 8.7 Thereafter, the Owner shall:
- .1 Review the Application for Payment and review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by the Contract Documents.
 - .2 Approve in writing the amount which, in the opinion of the Owner, is properly owing to the Construction Manager.
- 8.8 The amount of each such payment shall be the amount approved for payment by the Owner less such amounts, if any, otherwise owing by the Construction Manager to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents.
- 8.9 The submission by the Construction Manager of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, or other encumbrance by any person whatsoever.
- 8.10 As a condition precedent to partial payment, the Construction Manager shall, as required elsewhere

EXHIBIT A

in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, and/or properly executed documents reflecting that all subcontractors, materialmen, suppliers or others having rights, have acknowledged receipt of all sums due pursuant to all prior Payment Requests.

- 8.11 Furthermore, the Construction Manager warrants and represent that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.
- 8.12 Not Used
- 8.13 When payment is received from the Owner, the Construction Manager shall pay all subcontractors, materialmen, laborers and suppliers the amounts justly due for all Work covered by such payment in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act. In the event such payments are not made in a timely manner the Owner may, in its discretion, invoke reasonable procedures in order to protect Owner's interest or Owner's desire to assist in having subcontractors, laborers, suppliers, materialmen or others paid. By the Owner invoking reasonable procedures, it shall not relieve the Construction Manager of its responsibilities for payments under the contract.
- 8.14 It is mutually agreed that any payments made under this Contract, including but not limited to final payment, shall not constitute acceptance of defective or improper materials or workmanship nor shall same act as a waiver or release of future performance in accordance with the Contract Documents.
- 8.15 Final Payment. Construction Manager's application for final payment shall be accompanied by a completed and notarized Certificate of Contract Completion. Any items required by the Contract Documents not previously submitted shall accompany the Application for Final Payment. Neither final payment nor amounts retained, if any, shall become due until Construction Manager submits to Owner: (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or shall be paid from funds received from Owner; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (iii) a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; and (iv) consent of surety, if any, to final payment. Acceptance of final payment shall constitute a waiver of all claims by Construction Manager.
- 8.16 Within seven (7) days of receipt of payment from the Owner, Construction Manager shall pay each Subcontractor, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payment to Construction Manager on account of such Subcontractor's work. The Construction Manager will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 8.17 Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner in writing.
- 8.18 Withholding Payments To Subcontractors - The Construction Manager shall not withhold

payments justly due to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and project bookkeeping as required. Payments to subcontractors shall comply with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act.

- 8.19 Warranty Payments - To the extent a percentage of Construction Manager's fee or a dollar amount is due for services rendered during the warranty phase, Construction Manager shall receive 50% of said fee if the six (6) month warranty inspection work is satisfactorily completed and the balance due if the eleventh (11th) month warranty inspection work is satisfactorily completed.
- 8.20 Delayed Payments by Owner - Payments will comply with Section 218.70, Florida Statutes, and other relevant provisions of the Local Government Prompt Payment Act, as amended.
- 8.21 Underpayment by Construction Manager - If, in the performance of the Agreement, there is underpayment of moneys due from Construction Manager to consultants, Subcontractors, materialmen, laborers or suppliers, Owner may, at its option, withhold from Construction Manager, out of payments due it, an amount sufficient to pay to consultants, Subcontractors, materialmen, laborers or suppliers underpaid the difference between the amounts required to be paid to such consultants, Subcontractors, materialmen, laborers or suppliers and the amounts actually paid. The amounts withheld shall be disbursed by Owner to the respective consultants, Subcontractors, materialmen, laborers or suppliers to whom they are due, provided Owner shall consult with Construction Manager before disbursing such amounts to determine whether there are any outstanding disputes between Construction Manager and such persons or entities justifying the withholding of such amounts.
- 8.22 Right to Require Documentation and Audit. Owner may, as deemed necessary, require from the Construction Manager, support and documentation for any submission, including but not limited to applications for payment. Upon execution of this Agreement, the Construction Manager agrees that Owner shall have unrestricted access during normal working hours to all of Construction Manager's records relating to this project including but not limited to hard copy as well as electronic records for a period of three years after final completion.

ARTICLE 9 CONTRACT BONDS

- 9.1 The Agreement shall become effective and in full force only upon the execution of this agreement. The payment and performance bonds issued by a Surety Company acceptable to Owner in its sole discretion, such Surety being qualified and rated in accordance with the General Conditions, and approved by the United States Treasury Department and licensed to do business in the State of Florida shall be delivered with the executed GMP Addendum.
- 9.2 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 Agreement and as security for the payment of all persons performing labor and providing materials in connection with this Contract.
- 9.3 The form of Bonds required is included in Article 29 of the General Conditions. This is in addition

to any bonds of subcontractors or others.

**ARTICLE 10
NOTICES**

10.1 When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for given notice:

| Party: | | Address: |
|-----------------------|---|--|
| Owner: | SUPERINTENDENT OF SCHOOLS The School Board of Broward County, Florida | 600 Southeast Third Avenue Fort Lauderdale, FL 33301 Attn: Mr. Robert Runcie |
| With Copy To: | Chief Facilities and Construction Officer | Office of Facilities & Construction 2301 SW 26th Street Fort Lauderdale, FL 33311 Attn: Mr. Leo Bobadilla |
| Construction Manager: | Gilbane Building Company | 661 University Blvd- Ste 107 Jupiter, FL 33458 |
| Surety: | Travelers Casualty and Surety Company of America | 350 Granite Street, Suite 1201 Braintree, MA 02184 |
| Surety's Agent: | Alliant Insurance Services, Inc | 131 Oliver St 4th floor Boston, MA 02110 |
| Project Consultant: | Wolfberg Alvarez & Partners, Inc. | Wolfberg Alvarez & Partners, Inc. 3225 Aviation Avenue, Suite 400 Miami, FL 33133 |

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

**ARTICLE 11
AUTHORITY PROVISION**

11.1 Each person signing this Agreement on behalf of either party warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**ARTICLE 12
NON-DISCRIMINATION PROVISION**

- 12.1 Non-Discrimination: The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**ARTICLE 13
CAPTION PROVISION**

- 13.1 Captions – The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**ARTICLE 14
ASSIGNMENT PROVISION**

- 14.1 Assignment – Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from The School Board of Broward County, Florida.

**ARTICLE 15
EXCESS FUNDS PROVISION**

- 15.1 Excess Funds – Any party receiving funds paid by The School Board of Broward County, Florida under this Agreement agrees to promptly notify The School Board of Broward County, Florida of any funds erroneously received from The School Board of Broward County, Florida upon the discovery of such erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by The School Board of Broward County, Florida.

**ARTICLE 16
BACKGROUND SCREENING**

- 16.1 Background Screening – Construction Manager agrees to comply with all requirements of Sections 1012.32, 1012.465 and 1012.467, Florida Statutes, as amended from time to time, and that Construction Manager, its agents, subcontractors 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 Owner in advance of Construction Manager or its personnel providing any services under the conditions described in the previous sentence. Construction Manager will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to

maintain the fingerprints provided with respect to Construction Manager and its personnel. The Parties agree that the failure of Construction Manager to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Owner to terminate immediately for cause with no further responsibilities to make payment or perform any other duties under this Agreement.

Construction Manager agrees to require all its affected employees to sign a statement, as a condition of employment with Construction Manager in relation to performance under this Agreement, agreeing that the employee will abide by all background screening requirements, and also agreeing that the employee will notify the Construction Manager of any arrest(s) or conviction(s) within 48 hours of its occurrence. Construction Manager agrees to provide the Owner with a list of all of its employees who have completed background screening as required by the above-referenced statutes and who meet the statutory requirements contained therein. Construction Manager agrees that it has an ongoing duty to maintain and update these lists as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. Construction Manager further agrees to notify Owner immediately upon becoming aware that one of its employees who was previously certified as completing the background check and meeting the statutory standards is subsequently arrested or convicted of any qualifying offense. Failure by Construction Manager to notify Owner of such arrest or conviction within 48 hours of being put on notice and within 5 business days of the occurrence of qualifying arrest or conviction, shall constitute grounds for immediate termination of this Agreement for cause by Owner.

If Owner deems necessary, Owner will issue each employee a photo identification badge which shall be worn by the individual at all times while on Owner property when students are present. Construction Manager agrees to bear all costs relating to obtaining all required photo identification badges.

Construction Manager agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Construction Manager's failure to comply with the requirement of this Section or Sections 1012.32, 1012.465 and 1012.467, Florida Statutes in addition to any other indemnification obligations imposed upon Construction Manager pursuant to Article 30 of the General Conditions and the laws of Florida.

ARTICLE 17 CONSULTANTS COMPETITIVE NEGOTIATION ACT

- 17.1 If the total fee paid to the Construction Manager exceeds \$195,000, the following provisions of the Consultants Competitive Negotiation Act, Section 287.055(5)a., Florida Statutes shall apply:
- 1) The Construction Manager shall execute and furnish to Owner a Truth-In-Negotiation certificate (Exhibit "C") stating that wage rates and other factual unit costs supporting compensation are accurate, complete and current at the time of executing the contract.
 - 2) The original contract amount and any additions there to shall be adjusted to exclude any significant sums when Owner determines the contract amount was increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs.
- 17.2 The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation,

individual, or firm, other than a bona fide employee working solely for the Construction Manager any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement

ARTICLE 18 COMPLIANCE WITH SCHOOL CODE

- 18.1 Construction Manager agrees to comply with all sections of the Florida K-20 Education Code, Title XLVIII, Florida Statutes as it presently exists, and further as it may be amended from time to time. Further, Construction Manager agrees that failure to comply with the Florida K-20 Education Code shall constitute a material breach of this Agreement and may result in the termination of this Agreement for cause by the Owner.

ARTICLE 19 PUBLIC RECORDS LAWS

- 19.1 This Agreement shall be subject to Florida's Public Records Laws, Chapter §119.011 et. Seq., Florida Statutes. Construction Manager understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. Construction Manager shall keep records to show its compliance with program requirements. Construction Manager and its sub-contractors must make available, upon request of Owner, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the Construction Manager which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Construction Manager shall retain all records for three (3) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1), and for a period of five (5) years. Exempt or confidential information shall not be disclosed unless authorized by law; Construction Manager shall destroy any duplicate records which are exempt from public records disclosure as set forth in Chapter 119. Upon termination of this agreement all public records in possession of Construction Manager must be transferred to Owner at no cost. If records are stored electronically the records must be provided in a compatible format to Owner's operating system.

EXHIBIT A

In witness thereof, the said GILBANE BUILDING COMPANY (Construction Manager), and the Owner, The School Board of Broward County, Florida have caused this Agreement to be executed and their corporate seal affixed by and through their proper offices, thereunto duly authorized, on this day and year first above written.

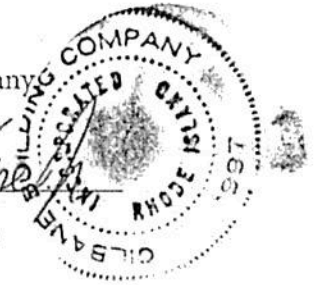
OWNER
THE SCHOOL BOARD BROWARD
COUNTY, FLORIDA

Gilbane Building Company

William J. Gilbane, Jr.

William J. Gilbane, Jr
Vice Chairman

SEAL



By: _____
, Chair

By: _____
President of Corporation

By: _____
Superintendent of Schools

By: *Sioma Felles*
Witness or Attest Secretary
Brad A. Gordon
Secretary

Approved as to Form and Legal Content:

M. Conroy
Office of the General Counsel

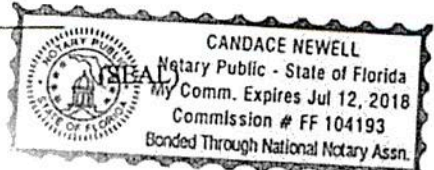
Stranahan High School Project

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME this day appeared William J. Gilbane, Jr. and, Gilbane Building Company (Construction Manager) personally known to me to be the persons described in and who executed the foregoing agreement and acknowledge that he executed the same as his free act and deed for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this 18th day of October, 2016

[Signature]
Notary Public State of Florida



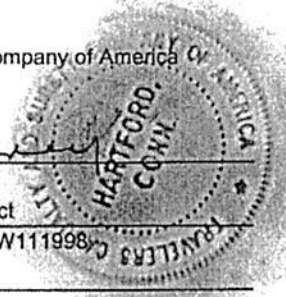
My Commission Expires:

ACKNOWLEDGMENT

The Surety acknowledges that it has read the foregoing Construction Contract and has familiarized itself with the obligations of the Construction Manager and the Surety as stated therein, which obligations are agreed to by Surety and are incorporated, by reference to the Construction Management Agreement, and the Payment and Performance Bonds.

SURETY: Travelers Casualty and Surety Company of America

By: Jean M. Feeney
Its: Jean M. Feeney, Attorney-in-fact
FL Non-Resident License No. W111998
Date: October 18, 2016

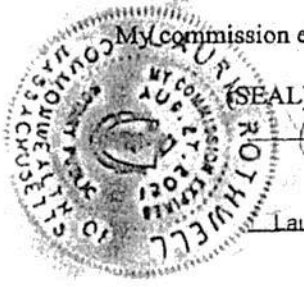


STATE OF Massachusetts
COUNTY OF Suffolk

The foregoing instrument was subscribed and sworn to by

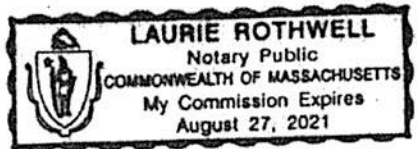
Jean M. Feeney before me this 18th day of October, 2016

My commission expires:



[Signature]
Signature - Notary Public

Laurie Rothwell
Printed Name of Notary



N/A
Notary's Commission No.

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

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

ARTICLE 25 CONSTRUCTION MANAGER'S FEES

- 25.1 Payment for Construction Services. Construction Manager's Fee related to the construction services rendered shall be limited to the percentage, shown on Exhibit B of the CMAR Agreement (and as outlined in General Conditions Exhibit D), of the Cost of Work. Cost of Work for the purposes of computing Construction Manager's Fees shall include all costs incurred in completion of the work as defined in Article 26 excluding any contingency or allowances.
- 25.2 Costs and Expenses Included in General Conditions / General Requirements Fee - The following (a non-exclusive list) shall be included in the Construction Manager's General Conditions / General Requirements for services during the Construction Phase:
- .01 Salaries or other compensation of the Construction Manager's employees at the Project site.
 - .02 The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on General

Conditions Exhibits C.

- .03 General operating expenses incurred in the management and supervision of the project.
- .04 Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and other supplies.
- .05 Other 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 Security
- Computers
- Pest Control
- Trash Hauling Equipment
- CPM Consultants
- Drug Testing
- Quality Control Systems
- Telephone Systems And Associated Charges
- Trash Chutes
- Surveys And Layouts
- Safety Rails
- Safety Inspections
- Parking Space
- Temporary Fencing
- Material Unloading
- Golf Carts
- General Purpose Carpenters
- Horizontal And Vertical Transportation Of Materials And Personnel
- Field Office Setup
- Field Office Furniture
- Copy Machines
- Postage
- As Built Drawings
- Security Guards
- Living Expenses
- Daily Cleanup
- Trash Dumpsters And Associated Fees
- Cleanup/Safety Labor
- Portable Toilets And Tanks
- Safety Supplies
- Water/Ice/Cups
- Barricades
- Electric Charges
- Material Hoists
- Punch Lists
- Temporary Plywood Partitions
- Temporary Storage Containers
- Field Office Janitorial
- Salaries At Project Site
- Fax Machines
- Couriers
- Closeout Documents
- I.D. Badges
- Progress Photographs
- Final Cleaning
- Blueprints And Copies Of Blueprints
- Radios
- Job Signs
- First Aid Supplies
- Fire Extinguishers
- Small Tools
- Water Charges
- Personnel Hoists
- Storage
- Temporary Heat

- 25.3 The costs of premiums for all insurance and bonds (including Subguard) which the Construction Manager is required to procure by this agreement specifically for the construction project.
- 25.4 Any General Condition / General Requirement Cost(s) line item that inadvertently is included in a Cost of Work item and appears on the approved Cost of Work Schedule of Values Application for Payment forms shall be removed immediately and any payment made to the CM of this line item shall be reimbursed to the Owner upon being identified on the subsequent Payment Application.

**ARTICLE 26
COST OF WORK**

- 26.1 Definition - The term Cost of Work shall mean direct costs necessarily incurred in the Project during the Construction Phase for Construction services, paid by the Construction Manager less any reimbursement for scrap value and cash or trade discounts. Cost of Work does not include those fees and other costs set forth in Article 25. Cost of the Work shall include the items set forth below in this Article.

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

26.2 Direct Cost Items

- .01 Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to contract under this Agreement.
- .02 Construction Manager supplied heavy equipment used on the project shall be priced for contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used. Further, for contractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to the fair market value of the piece of equipment when first brought on to the job site. Fuel necessary to operate the equipment will be considered as a separate direct cost. Maintenance and Repairs on owned equipment are reimbursed through the rental rate.

EXCEPTION: Tools and equipment with a cost less than \$1,000 shall be considered part of the Construction Manager's General Conditions and shall not be considered to be part of Project Costs.

- .03 Not Used
- .04 Cost including transportation and maintenance of all materials, supplies, equipment and tools not owned by the workmen, which are employed or consumed in the performance of the work. Charges for material shall be the Construction Manager's net actual cost for the purchase of the material required to complete the Work. A reasonable allowance shall be made for waste and scrap. All materials purchased that exceed the quantities required to complete the work shall be returned or sold for scrap, with the proceeds credited to the Owner. Credits for cost reductions available to the Construction Manager due to trade discounts, free material credits, and/or volume rebates will accrue to the benefit of the Owner. Cash discounts available on material purchases shall be credited to Owner if the Construction Manager is provided Owner funds in time for Construction Manager to take advantage of any such cash discounts. The Construction Manager is required to notify the Owner should the cash discount on a particular purchase equal or exceed \$1,000, to allow the Owner the opportunity to participate in the cash discount.
- .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 subcontractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.

- a) Proposed rental rates and related fair market values for Contractor owned (affiliate owned, subsidiary owned, or related party owned) equipment shall be submitted to and approved by Owner prior to being used in connection with the Work. The projected usage for each piece of equipment proposed to be rented, and estimated total rentals shall be submitted for approval in advance in a form satisfactory to Owner so that an appropriate lease versus buy decision can be made.
- b) Equipment rented from third parties shall be priced at the net actual rental cost, considering all trade and other discounts available to the Construction Manager. Costs of third party or rental equipment supplier insurance shall be declined and the insurance of such equipment shall be under the insurance program for the entire project. 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. Arrangements such as rent-to-own shall be made known to and shall accrue to the benefit of the Owner. Any and all equipment acquired during this project due to a rent-to-own arrangement shall be the property of the Owner. At the conclusion of the project any of this equipment may, at the discretion of the Owner, be sold to the Construction Manager or others at a price to be

negotiated at that time.

- 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.
- .06 No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.
 - .07 If pre-approved by the Owner in writing, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP Schedule of Values breakdown where it is deemed advantageous due to schedule or economic benefit. Bidding, documentation, and reimbursement of self-performed work is subject to the provisions outlined in Articles 3.4.9 and 3.5.4 of the Agreement.

26.3 COSTS NOT TO BE REIMBURSED

- .01 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office. Bonuses, profit sharing, and any discretionary form of compensation or fringe benefits.
- .02 Expenses of the Construction Manager's principal office and offices other than the Project site office.
- .03 Construction Manager's capital expenses, including interest on Construction Manager's capital used for the Work.
- .04 Any cost not specifically and expressly described in subsection 26.2 above.
- .05 Cost which would cause the GMP to be exceeded (other than adjustments pursuant to the terms herein for Change Orders and Construction Change Directives).
- .06 Cost of the Construction Manager's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, the

EXHIBIT C
CHANGE ORDERS, EXTRA WORK AND CLAIMS

1. The contract language contained in this Article will supplement and take precedence over all other change order pricing contract provisions in file contract documents provided by either the Owner or the Construction Manager and/or Architect/Engineer. It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by the Construction Manager, Prime Contractors, Trade Contractors or Subcontractors (Subcontractor), and all other lower tier Contractors (Sub-Subcontractors) working on the Project. In the event of a conflict between the language in this Exhibit and the other contract documents used for the project, the change order pricing and contract provisions in this Exhibit shall govern.
2. The Construction Manager agrees that it will incorporate the provisions of this Exhibit into all agreements with lower tier Contractors, Subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts, and/or cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change order pricing, specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.
3. The term change order shall include Extra Work and Claims unless specifically excluded or further described.
4. Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Construction Manager in accordance with the pricing provisions found in this Exhibit. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus change order proposal as defined in the following provisions:
 - a. **Lump Sum Change Order Proposals** - The Construction Manager will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format *satisfactory* to Owner. The Owner will require itemized change orders on all change order proposals from the Construction Manager, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).

Labor: Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Construction Manager for those workers or crews of workers who the Construction Manager reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentages as outlined in paragraph 6 of this Article.

Labor Burden - Labor burden allowable in change orders shall be defined as employer's net *actual* cost of payroll taxes (FICA, Medicare, SUTA, 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 employers for worker's compensation insurance

ARTICLE 44
RIGHT TO AUDIT PROVISIONS

- 44.1 Construction Manager's "records", as referred to in this contract, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Construction Manager records which may have a bearing on matters of interest to the Owner in connection with Construction Manager's dealings with the Owner (,all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Construction Manager compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the Construction Manager or his payees. Construction Manager shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Construction Manager will cooperate fully and will require Related Parties and all of Construction Manager's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.
- 44.2 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Construction Manager's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.
- 44.3 Owner's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- 44.4 Construction Manager shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payees' costs from amounts payable to the Construction Manager pursuant to this contract.
- 44.5 If an audit inspection or examination in accordance with this Article, finds that the Construction Manager overcharged Owner, the Construction Manager shall pay to Owner the Overcharged Amount,

which is defined as the total aggregate overcharged amount, together with interest thereon, (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$25,000.00, Construction Manager shall pay to Owner the Overcharged Amount and the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit costs, incurred as a result of its audit of Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts; to Owner within seven (7) business days of its receipt of Owner's invoice or such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

ARTICLE 45 MISCELLANEOUS

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

project manager or Chief Facilities Officer, any of Construction Manager's personnel who are deemed detrimental to the efficient management and completion of the project. Determination of whether an employee is detrimental is at the sole discretion of the Owner or its representatives.

ARTICLE 9 LINES OF AUTHORITY

- 9.1 The Construction Manager shall establish and maintain lines of authority for his personnel, and shall provide an organizational chart to the Owner and all other affected parties such as the Building Code Inspectors (BCI) of the Permitting Authority, the sub-contractors, the Project Consultant 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 Construction Manager and his Subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to direct the subcontractor.

ARTICLE 10 SCHEDULE AND PROJECT MANUAL PROVISIONS

- 10.1 The Construction Manager shall provide subcontractors and the Owner, its representatives and the Project Consultant with copies of the Project Manual developed by the Construction 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 Construction 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

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

ARTICLE 12 LICENSE AND PERMITS

SECTION III
FULL TEXT OF MANAGEMENT'S RESPONSES

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF FACILITIES & CONSTRUCTION

SHELLEY N. MELONI, R.A., NCARB, LEED® AP
DIRECTOR, PRE-CONSTRUCTION

Telephone: (754) 321-1515

Facsimile: (754) 321-1501

June 8, 2017

TO: Leo Bobadilla
Chief Facilities Officer

FROM: Shelley N. Meloni, R.A., NCARB, LEED® AP
Director, Pre-Construction



SUBJECT: **MANAGEMENT RESPONSE TO INTERNAL AUDIT REPORT – CURRENT
STATUS UPDATE – MC GLADREY, LLP – OPERATIONAL REVIEW OF THE
OFFICE OF FACILITIES & CONSTRUCTION (OFC) – APRIL 2015**

Attached please find the responses to the above subject Audit.

SNM:ma
Attachment

c: Rob Chomiak, Senior V-P, Heery
Audit Response File, OFC

Date: June 7, 2017
To: Shelley Meloni
From: Rob Chomiak
Subject: Response to Audit Findings
Distribution: Robert Corbin



MEMORANDUM

Prior to the implementation and use of Construction Management at Risk (CMAR) on the SMART program, the existing District contract documents that would be used for the CMAR delivery method were updated. The document update was led by Heery International, the Owner's Representative on the SMART program, and incorporated comments previously provided by RSM (McGladrey) as well as input from external legal counsel, the Office of the Chief Auditor, and others.

The only observation that was not adopted was Observation #21. The Owner's Representative recommended a Lump Sum approach to General Conditions rather than a Time and Material approach.

The remaining recommendations from the audit report have been reviewed, and we offer the following responses:

Observation #8 - Disclosure of Related Party Relationships

RESPONSE: Item is complete - see Section 3.4.5 of the CM Contract.

Observation #9 - Buyout Savings Reconciliation

RESPONSE: Item is complete - see Section 3.4.8 of the CM Contract.

Observation #10 - Buyout Savings Reconciliation - Monthly Reconciliation

RESPONSE: Item is complete - see Section 6.1.2 of the CM Contract.

Observation #11 - General Conditions as a Reimbursable Not-to-Exceed Cost

RESPONSE: Item is complete - see Section 7.1.3 of the CM Contract.

Observation #12 - Applications for Payment to the Construction Manager

RESPONSE: Item is complete - see Sections 8.1.8, 8.1.9 and 8.13 of the CM Contract.

Observation #13 - Construction Manager's Fees

RESPONSE: Item is complete - see Article 25.1 of the CM General Conditions of the Contract.

Observation #14 - Cost of the Project

RESPONSE: Item is complete - see Articles 26.2.02, 26.2.04, 26.2.05, and 25.2.01 of the CM General Conditions of the Contract.

Observation #15 - Change Orders, Extra Work and Claims

RESPONSE: Item is complete - see Exhibit C of the CM Contract.

Observation #16 - Right to Audit Provisions

RESPONSE: Item is complete - see Article 44 of the General Conditions of the CM Contract.

Observation #21 - General Conditions and Labor Negotiations

RESPONSE: CM Contract has lump sum GCs that are supported with a complete breakdown and negotiated per Article 25 of the General Conditions of the Contract.

Observation #22 - Subcontracts - Related Party Identification

RESPONSE: Item is complete - see Section 3.4.5 of the CM Contract.

Observation #23 - Subcontracts - Bid Tabulation Review & Buyout Reconciliation

RESPONSE: Item is complete - see Section 3.4.5 of the CM Contract.

Observation #24 - Project Procurement Schedules

RESPONSE: Item is complete - see Article 10 of the General Conditions of the CM Contract.

Observation #34 - Construction Manager's Fee on Change Orders

RESPONSE: Item is complete - see Exhibit C of the CM Contract.

Observation #39 - Field Mobility Device

RESPONSE: The system that was in place at the time of the audit has been changed and Facilities and Construction Project Managers are no longer managing projects directly. However, we are reviewing the use of tablets by the Owner's Representative in conjunction with e-Builder implementation.

Observation #40 - Project Management Software Training

RESPONSE: e-Builder has been implemented as the Project Management Information System for the current program.

Please let me know if you have any questions.

**SECTION IV
ABBREVIATIONS**

ABBREVIATIONS

| | |
|-------|---|
| A/E | Architect/Engineers |
| CCD | Construction Change Directive |
| CCNA | Consultant’s Competitive Negotiations Act |
| CDs | Construction Documents |
| CM | Construction Manager |
| CMAR | Construction Manager at Risk |
| CM@R | Construction Manager at Risk |
| CO | Change Order |
| COI | Change Order Item |
| DOE | Department Of Education |
| DOP | Direct Owner Purchase |
| ECD | Estimated Completion Date |
| E&O | Errors and Omissions |
| F.S. | Florida Statutes |
| FBC | Florida Building Code |
| F&CM | Facilities and Construction Management Division |
| FHSAA | Florida High School Athletic Association |
| FS | Florida Statutes |
| GMP | Guaranteed Maximum Price |
| HVAC | Heating, Ventilation and Air Conditioning |
| OCA | Office of the Chief Auditor |
| OFC | Office of Facilities & Construction |
| OR | Owner’s Request |
| LSC | Life Safety Code |
| N/A | Not Applicable |
| NFPA | National Fire Protection Association |
| PM | Project Manager |
| PO | Purchase Order |
| PPO | Physical Plant Operations |
| PSA | Professional Services Agreement |
| RAF | Regional Athletic Facility |
| SBBC | School Board of Broward County |
| SREF | State Requirements for Educational Facilities |
| UBCI | Uniform Building Code Inspector |
| UC | Unforeseen Condition |