

**CONTINUING CONTRACT –  
CONSTRUCTION SERVICES AGREEMENT**

**BETWEEN**

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

**AND**

**CONSTRUCTION MANAGER**

**FOR**

**CONSTRUCTION MANAGEMENT AT RISK SERVICES**

**PROJECT NAME :** Continuing Contracts CMAR 1 Million-2 Million Dollar

**CONSTRUCTION MANAGER:** Asset Builders, LLC. DBA Messam Construction  
StateCorp: Florida  
Street: 3600 Red Road Suite 303  
City/State/Zip: Miramar, Fl 33025  
Phone:877-963-7726 Fax:877-802-0674

FORM OF AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made and entered into this 6<sup>th</sup> day of September in the year 2017 by and between

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

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

Contractor's Name: Asset Builders, LLC. DBA Messam Construction

Contractor's Street Address: 3600 Red Road Suite 303

City, State, Zip: Miramar, Fl 33025

Contractor's Phone: 877-963-7726

Contractor's FAX: 877-802-0674

Federal Employer Identification Number (FEIN): 14-1867540

State of Incorporation: Florida

(hereinafter referred to as "**Construction Manager**")

**WHEREAS**, Owner is the owner of certain real property located in Broward County and Owner desires to have Construction Management Services for a variety of potential projects of various scopes and value on as needed, continuing contract basis.

**WHEREAS**, this Contract is for a "continuing contract" where the estimated construction cost of each individual project undertaken shall not exceed \$2,000,000.and the cumulative estimated construction cost of all projects undertaken under this agreement shall not exceed \$20,000,000

**WHEREAS**, the Owner desires to have Construction phase services completed pursuant to drawings, specifications and other contract documents that will be prepared by a Project Consultant (hereinafter referred to as Project Consultant).

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

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

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**ARTICLE 1**  
**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 foregoing to the Owner, Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .9 The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit 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. When three (3) or more bids are received for that portion of work, and the Construction Manager's bid is the lowest and approved by the Owner, the Construction Manager's bid shall be incorporated in the GMP as a lump sum. In the event where fewer than three (3) bids are received for that portion of work which the Construction Manager intends to self-perform, the Owner shall reimburse the Construction Manager for the actual cost of work performed, subject to the supporting documentation provisions as outlined in this Agreement.

### 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 3.4.9, 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 (6<sup>th</sup>) and eleventh (11<sup>th</sup>) 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:

Two hundred to Four Hundred dollars \$200-400 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:  
Two hundred to Four Hundred dollars \$200-400 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. Prior to incorporation into the approved GMP, the Construction Manager shall prepare a detailed schedule of General Conditions items and appropriate supporting documentation for review and approval by the Owner and Owner's Representative. The General Conditions listing and supporting documentation shall be provided in a format acceptable to Owner.
  - .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)
- .7 Executed subcontract agreements (Agreement 3.4.5)

.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)
  - .7 Allowance usage log (Agreement 8.5)
  - .8 Contingency usage log (Agreement 8.5)
- .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)
    - .5 Agreement Execution and Contract Bonds (Agreement 9.1)
    - .6 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, if adequate supporting documentation is not provided as addressed in Article 8.5 of the Agreement, 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. Pursuant to the requirements of Florida Statutes Section 255.078 (5), upon fifty percent completion, the retainage withheld from future payment applications will be reduced to five percent until the project has reached final completion and accepted by the Owner. 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. This shall include, but not be limited to invoices, subcontractor pay applications, subcontractor releases of lien, buyout savings reconciliation, allowance usage log, contingency usage log, and other documents as required by Owner. 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.
- 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 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; (iv)

consent of surety, if any, to final payment and (v) a final accounting of the Cost of Work. 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:

<b>Party:</b>	<b>Address:</b>
Owner:	SUPERINTENDENT OF SCHOOLS The School Board of Broward County, Florida
With Copy To:	Chief Facilities and Construction Officer
Construction Manager	Asset Builders, LLC. DBA Messam Construction
Surety	United States Fire Insurance Company
Surety's Agent	Nielson, Hoover & Company, Inc.
Project Consultant:	TBD

- 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 “\_\_\_”) 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 thereto 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.

**ARTICLE 20**  
**TAXES AND DIRECT OWNER PURCHASE OPTION**

20.1 The Construction Manager has included in its GMP and shall pay all sales, consumer, use and other similar truces for the Work or portions thereof provided by the Construction Manager which are legally enacted at the time the GMP is established, whether or not yet effective. Owner reserves the right to delete portions of the Work and to direct purchase materials to realize a true savings via an Owner Direct Purchase ("ODP" program. Construction Manager hereby agrees to permit Owner to direct purchase from his suppliers at prices quoted to Construction Manager and for Owner to retain any true savings generated thereby.

20.2 In accordance with the provisions of Article 20.1 of this Agreement, Owner may exercise its right to implement an Owner Direct Purchase/ Sales Tax Savings Program, with respect to this Agreement. This Article describes the procedures by which this program will be implemented and administered if the Owner subsequently determines to do so. Pursuant to these procedures, Owner may order and pay for all such purchases, as well as take title to all such purchases, directly from the supplier or manufacturer.

At the time the GMP is established, but not later than concurrently with submission of the required Schedule of Values, Owner, Owner's Representative, and Construction Manager shall endeavor to identify the specific items and the estimated costs of the potential Owner Direct Purchases ("ODP"). Construction Manager shall identify a separate line item cost for each potential ODP item. Construction Manager must clearly and separately identify any contingency or allowance amount associated with any ODP line items. The GMP must include the total cost of the Work, including the cost of the ODP items and their associated sales taxes.

Based upon its review of the Contract Documents, Construction Manager shall recommend potential ODP items to Owner and Owner's Representative. After reviewing the Construction Manager's recommendations and the applicable Contract Documents, and after consultation with the Owner's Representative, Owner shall make the final determination as to which items, if any, will be purchased as ODP items.

20.3 After Owner identifies the ODP items, Construction Manager shall prepare a standard purchase order requisition on a purchase order form provided by Owner, to specifically identify the materials which Owner has elected to purchase directly. The purchase order requisition form shall include the following information:

1. Project Name;
2. Construction Manager Name;
3. Manufacturer/Supplier Name;
4. Name, address, telephone number and contact person for Manufacturer/ Supplier;
5. Manufacturer or brand model or specification number of the item;
6. The quantity and unit of measure needed as estimated by Construction Manager;
7. The price quoted by the Manufacturer/Supplier for the materials or equipment identified;
8. All sales tax associated with the price quote;
9. Delivery address;
10. Delivery dates;
11. Delivery instructions;
12. Vendor identification number;
13. Mailing address for invoices.

All purchase order requisitions prepared by Construction Manager must be sent to Owner's Office of Facilities & Construction, with a copy to the Owner's Representative, and they must be expressly approved by Owner before they will be sent by Owner to the applicable Manufacturer/Supplier. In preparing the standard purchase order requisition, the Construction Manager shall include all terms and conditions, which may have been negotiated by the Construction Manager with the Manufacturer/Supplier {e.g. payment terms, warranties, etc.}. To the extent any such terms or conditions differ from the standard terms and conditions included in Owner's standard purchase order requisition form, such differences must be specifically identified to Owner by the Construction Manager at the time the Construction Manager forwards the requisition to Owner for its review. All shipping expenses associated with any ODP item (including all freight insurance) must be included in the cost of that item and not charged as a separate item.

All purchase order requisitions prepared by Construction Manager must be submitted to Owner and Construction Manager no less than twenty-one (21) calendar days prior to the need for the ordering of the subject ODP item, in order to provide sufficient time for their review. Construction Manager is responsible for ensuring that all necessary attachments to the purchase order requisition {e.g., shop drawings, details, specification sheets, etc.} required to properly place the order with the Manufacturer/Supplier, have been attached to the purchase order requisition at the time it is sent to Owner for their review. Once approved by Owner, Owner shall forward the completed purchase order requisition, with all attachments, to the Manufacturer/Supplier, with a copy to Construction Manager.

The Owner shall take title to ODP items from the Manufacturer/Supplier at the time of purchase or delivery, as applicable, according to the terms of purchase and delivery. The Owner assumes the risk of loss with respect to ODP items in that it bears the economic burden of insurance for loss or damage, and directly enjoys the economic benefit of proceeds of such insurance as an additional named insured.

- 20.4 As ODP items are delivered to the job site, the Construction Manager shall visually inspect all shipments from Manufacture/Suppliers, and approve the vendor's shipping record for material delivered. The Construction Manager shall assure that each delivery of an ODP item is accompanied by the appropriate documentation to adequately identify the purchase order number against which the purchase is made and to confirm that the correct type and quantity of the ODP item has been delivered in the appropriate condition. The Construction Manager's approval will include a legible signature (printed) of the person who inspected the delivered items, dated as of the date of delivery.

All invoices from the Manufacturer/Supplier must be directed and sent to Owner's Representative and Owner's Office of Facilities & Construction via the Construction Manager. It is the responsibility of the Construction Manager to review all such invoices and confirm their correctness before forwarding them on to the Owner's Representative and Owner for processing and payment. The Construction Manager shall verify in writing to Owner the accuracy of the invoice in relation to the delivery ticket and the ODP items actually delivered. The Construction Manager shall obtain from the Manufacturer/Supplier all releases, warranties and other necessary supporting documentation which may be required by Owner and shall insure that all such releases, warranties and supporting documentation have been attached to the invoice before forwarding the invoice to Owner for processing and payment. The Construction Manager also is responsible for obtaining from the Manufacturer/Supplier all operating information and manuals, spare parts and all other items required to be provided by the Manufacturer/Supplier. The

Construction Manager shall review all such items for compliance with the requirements of the Contract Documents and shall organize and deliver all such items to Owner as part of its requirements for achieving Substantial Completion of the Work.

Each month the Construction Manager, Owner and the Owner's Representative shall review the ODPs that have been delivered and paid for during that month. Construction Manager's shall prepare a log of ODPs, showing the amount equal to the value of any ODPs, including sales taxes, paid for by Owner. At a time of its choosing, but prior to completion of the Work, Owner shall prepare an appropriate Change Order, for Construction Manager's execution, which reduces the Contract Sum by the total cost paid by Owner for the ODPs, together with the amount of sales tax savings that have been realized as a result of Owner Direct Purchases. Further, the Change Order shall deduct from the GMP any remaining contingency or allowance balance associated with the subject ODP item.

Nothing in this Article 20 relieves the Construction Manager from its responsibility for the requisitioning of the order, scheduling, coordinating, insuring, delivery, unloading, storage, installation, repair, operation and warranty of all ODP items. All such obligations remain the responsibility of the Construction Manager and have been pay for by Owner as a part of the Contract Price (which always included these responsibilities and obligations) as fully as if there had been no Owner ODP purchase whatsoever.

In witness thereof, the said Asset Builders, LLC. DBA Messam Construction (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

CONSTRUCTION MANAGER  
(Asset Builders, LLC. DBA Messam Construction)

  
Print Name: Wayne M. Messam partner



By: \_\_\_\_\_  
Chair Abby M. Freedman

SEAL  
By: Angela Sands Messam  
Witness or Attest Secretary Angela Messam

By: \_\_\_\_\_  
Robert W. Runcie  
Superintendent of Schools

By: Richard McLean  
Witness Richard McLean

Approved as to Form and Legal Content:  
M. Courtney  
Office of the General Counsel

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME this 6<sup>th</sup> day of July 2017 appeared Richard McLean  
Angela Messam  
Wayne M. Messam, Partner and,  
Wayne M. Messam, Partner (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 6<sup>th</sup> day of  
July, 2017.

Lloyd H. Messam  
Notary Public State of Florida



My Commission Expires: 8/5/2018

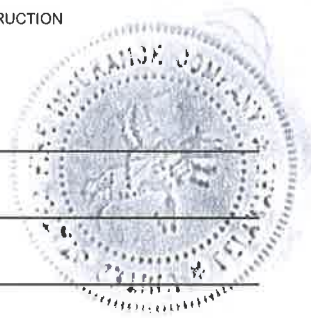
**ACKNOWLEDGMENT**

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.

ASSET BUILDERS, LLC D/B/A MESSAM CONSTRUCTION

**SURETY:**

By: [Signature]  
Its: Ian A. Nipper, Attorney-In-Fact  
Date: July 6, 2017



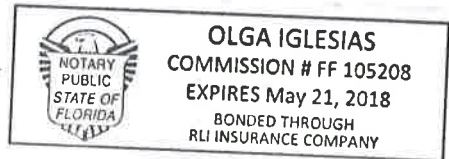
STATE OF Florida  
COUNTY OF Miami-Dade

The foregoing instrument was subscribed and sworn to by

Ian A. Nipper before me this 6<sup>th</sup> day of July, 2017.

My commission expires:

(SEAL)  
[Signature]  
Signature – Notary Public  
Olga Iglesias  
Printed Name of Notary  
FF 105208  
Notary's Commission No.



POWER OF ATTORNEY  
UNITED STATES FIRE INSURANCE COMPANY  
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY

00927402018

**KNOW ALL MEN BY THESE PRESENTS:** That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

*Ian A. Nipper, David Russell Hoover, Joseph Penichet Nielson,  
Charles David Nielson, Charles Jackson Nielson, Shawn Alan Burton*

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Ten Million Dollars (\$10,000,000)**.

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2018.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

**IN WITNESS WHEREOF**, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 10<sup>th</sup> day of March, 2016.

UNITED STATES FIRE INSURANCE COMPANY



Anthony R. Slimowicz, Senior Vice President



State of New Jersey }  
County of Morris }

On this 10<sup>th</sup> day of March 2016, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

SONIA SCALA  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES 3/25/2019

Sonia Scala



(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 6<sup>th</sup> day of July 20<sup>17</sup>

UNITED STATES FIRE INSURANCE COMPANY



Al Wright, Senior Vice President



**EXHIBIT A**  
**TO CONSTRUCTION MANAGER AT RISK AGREEMENT**

**GMP AMENDMENT**

THIS GMP AMENDMENT, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“GMP Amendment”) amends that certain Agreement between Owner (The School Board of Broward County, Florida) and Construction Manager (\_\_\_\_\_), made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ for the following described project: \_\_\_\_\_ (Project)

WHEREAS, the Owner and the Construction Manager have agreed to amend the Agreement in the manner set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, in the Agreement and the other Contract Documents and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Construction Manager do hereby agree as follows:

1. This GMP Amendment is executed in connection with, and is deemed to be a part of the Agreement and the Contract Documents. Wherever the terms of this GMP Amendment and the terms of the Contract Documents are in conflict, the terms of this GMP Amendment shall govern and control. The terms used herein, unless otherwise defined in this GMP Amendment, shall have the meanings ascribed to them in the Contract Documents.
2. The following are hereby incorporated into the Contract Documents and made part thereof:
  - a. The drawings listed on **Attachment I** attached hereto, which drawings are made a part of the Contract Documents by this reference (the “Drawings”); and
  - b. The specifications listed on **Attachment II** attached hereto, which specifications are made a part of the Contract Documents by this reference (the “Specifications”).
  - c. Those documents listed on **Attachment III**, Additional Contract Documents, attached hereto, are made a part of the Contract Documents by this reference.
3. The entire Scope of the Work for the Project is hereby incorporated into the work.
  - .1 The **Date of Commencement** for the construction shall be: \_\_\_\_\_ .  
The Construction Manager shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_ calendar days from the Date of



Commencement (the “Contract Time”) and final completion not later than \_\_\_\_\_ calendar days from the date of Substantial Completion. Failure to meet either the Substantial Completion or Final Completion dates shall be a material breach of this Agreement.

.1 The Owner and the Construction Manager acknowledge and agree that the Owner will suffer damages if the Construction Manager fails to achieve Substantial Completion of the entire Work, as defined in the Contract Documents, on or before the expiration of the Contract Time, which damages are difficult, if not impossible, to ascertain with any degree of certainty. Accordingly, if the Construction Manager fails to achieve Substantial Completion of the entire Work for this Project on or before the expiration of the Contract Time, liquidated damages (which are not intended as a penalty) shall be assessed against the Construction Manager in an amount of \_\_\_\_\_ dollars (\$ ) per calendar day.

.2 To the extent that the Contract Documents include specific provisions for liquidated damages to be applied separately for any Phase, Building or other portion of the Work prior to the required completion date or within the Contract Time for the entire Project, such liquidated damages shall be assessed based on the required completion dates and construction time durations set forth in the approved schedule for each such separate portion of the Work.

.3 The Guaranteed Maximum Price for the Project is hereby guaranteed by the Construction Manager not to exceed the sum of \_\_\_\_\_ (the “Project GMP”),

based upon the entire Scope of Work as described in the Contract Documents, including, but not limited to, the Drawings and the Specifications, subject only to additions and deductions by Change Order or Construction Change Directive, as provided in the Contract Documents. The GMP is more particularly itemized in the Schedule of Values prepared in accordance with the terms of the Agreement, which Schedule of Values is attached hereto and made a part of the Contract Documents by this reference. Included in the Schedule of Values and specifically identified herein, the contingency included in this guarantee maximum price is the amount of \_\_\_\_\_ .

.4 Whether or not the Construction or Contract Documents enumerated in the Attachments to this GMP Amendment have actually been completed to the level of 50% or 100% as defined by this Agreement, the Guaranteed Maximum Price includes all Work reasonably inferable from such Construction and Contract Documents, the documents referenced in section paragraph 1.4 of the Construction Manager At-Risk Agreement and all responses issued by the Design

Consultant to CM's bidding inquiries and requests for information, as necessary to deliver a fully completed and finished working Project. To the extent there exists a conflict between the Construction and Contract Documents and any of the other aforementioned reference documents, the item of higher price, quantity or quality shall be included in the Guaranteed Maximum Price, without use of any Contingency.

- .5 Procedures and expenditures related to use of any Contingency and any Allowances included in this GMP shall comply with CMAR Agreement Section 6.1.1, Specification Section 01250 respectively, and all provisions of such documents are incorporated into and made a part of this Contract.
- .6 Procedures and expenditures related to direct purchases of materials by the Owner for this Project shall comply with Specification Section 01295, and all provisions of such documents are incorporated into and made a part of this Contract.
- .7 The Construction Manager shall provide Commercial General Liability Insurance, Automobile Liability Insurance, Professional Liability Insurance and Worker's Compensation Insurance in compliance with the provisions of Article 9 of the CMAR Agreement and Article 29 of the General Conditions of the Contract for Construction, satisfactory to the Owner's Office of Risk Management.
- .8 By executing this GMP Amendment, the Construction Manager acknowledges that it has ascertained all correct locations for points of connection for all utilities, if any, required for this Project; and has identified all clarifications and qualifications for this Project, if any.
- .9 The Construction Manager's on-site management and supervisory personnel for this Project are set forth on **Attachment IV**, attached hereto and made a part hereof by this reference.
- .10 To the extent that the Owner has authorized the Construction Manager, in writing, to perform a portion of the Work for this Project; with the Construction Manager's own forces, the salary and wage schedule for the Construction Manager's personnel performing such portion of the Work, agreed upon by the Owner and the Construction Manager, shall be as set forth on **Attachment IV**, attached hereto and made a part of the Contract Documents by this reference. The Construction Manager warrants and represents that the salary and wage schedule includes the lowest comparable market rates (including any and all benefits, contributions and insurance) charged by the Construction Manager for comparable contracts to other businesses and individuals for similar services, and that such rates are not higher than the standard paid at the

place of this Project.

- .11 The Construction Schedule for this Project is set forth on **Attachment V**, attached hereto and made a part hereof by this reference. The final accepted schedule for construction as required in the Construction Manager At-Risk Agreement and included in this GMP Amendment shall not be construed as the Detailed Initial or Baseline Schedule as set forth in the General Conditions of the Contract for Construction which schedule shall be prepared by the CM and separately submitted for review and approval after approval of the GMP Amendment by the Owner, as set forth in the General Conditions of the Contract for Construction.
- .12 Except as expressly provided herein above, all of the terms, conditions, covenants, agreements and understandings contained in the Contract Documents shall remain unchanged and in full force and effect, and the same are hereby expressly ratified and confirmed by the Owner and the Construction Manager.
- .13 This Amendment may be executed in several counterparts, each of which shall be deemed an original but not all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

BY: \_\_\_\_\_  
Superintendent of Schools

SEAL

RECOMMENDED:

BY: \_\_\_\_\_  
Leo Bobadilla  
Chief Facilities Officer

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

BY: \_\_\_\_\_  
Attorney for Owner

FIRM NAME

BY: \_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
Print Name

**ATTACHMENTS**

ATTACHMENT I - CONTRACT DOCUMENTS - THE DRAWINGS

ATTACHMENT II - CONTRACT DOCUMENTS - THE SPECIFICATIONS

ATTACHMENT III - CONTRACT DOCUMENTS - ADDITIONAL CONTRACT DOCUMENTS

ATTACHMENT IV - CONTRACT DOCUMENTS - SALARY AND WAGE SCHEDULE

ATTACHMENT V - CONTRACT DOCUMENTS – THE CONSTRUCTION SCHEDULE

**END OF EXHIBIT “A”**

EXHIBIT B

(To Be Finalized Prior to Issuance of the ATP)

**LUMP SUM FEE BY TASK**

**Construction Management at-Risk for**

\_\_\_\_\_ **AT**

**PROJECT NO.** \_\_\_\_\_

<b>FIRM NAME:</b>	NAME/ADDRESS
<b>DATE:</b>	_____ (_____ MEETING)

As compensation for pre-construction services, the CM shall receive a fee as negotiated below:

<b>PRE-CONSTRUCTION SERVICE</b>	<b>LUMP SUM FEE (PER TASK)</b>
1. Phase I – Schematic Design	\$
2. Phase II – Design Development	\$
3. Phase III – 50% Construction Documents	\$
4. Phase III – 100% Construction Documents	\$
5. Phase IV - Bidding / GMP, Submittal / GMP, Negotiations / Award of GMP Amendment	\$
<b>TOTAL PRE-CONSTRUCTION FEE</b>	<b>\$</b>
<b>CONSTRUCTION PHASE</b>	
6. Construction Manager’s Fee (percentage of COW)	%

EXHIBIT C

Construction Manager's Proposal

To be added at contract execution



June 12<sup>th</sup>, 2017

Mrs. Shari Francis  
Procurement  
Broward Schools SMART Program  
7720 West Oakland Park Blvd  
Sunrise, FL 33351

**RE: RFQ# 17-196C**

**GOB: Broward County Schools SMART Program: Construction Manager At Risk Services  
Continuing Contracts for \$1,000,000.00 - \$2,000,000.00 Million Construction Cost**

Dear Mrs. Francis,

Messam Construction extends our greatest appreciation for the for the opportunity to provide and submit our Construction Manager Fees for Pre-Construction and Construction Phase Services for the above referenced project. The fee schedule is according to the format provided to Messam by Broward County Schools SMART Program.

Messam construction understands there are M/WBE goals associated with this project. Messam Construction has committed to obtaining 35% M/WBE Subcontractor goal participation during the construction phase. In addition, Messam Construction is a certified M/WBE firm with SBBC (see certificate attached). Messam has partnered with Grace & Naeem Uddin, Inc. as a certified M/WBE firm with SBBC to fulfill 25% sub-consultant M/WBE goal participation during the Pre-Construction and Construction phases of this RFQ (see certificate attached).

Sincerely,

A handwritten signature in blue ink, appearing to read "Wayne M. Messam", is written over a large, faint, light-colored watermark of the word "MESSAM" in the background.

Wayne M. Messam, CGC, LEED AP, BD+C  
Partner

Attachments:

- a. CM Fee Negotiations Worksheet
- b. M/WBE certificates – Asset Builders, LLC d/b/a Messam Construction



## Construction Manager Fee Negotiations (RFQ #17-196C)

**Company Name: Asset Builders, LLC d/b/a Messam Construction**

**For Projects with Construction value of \$1,000,000 - \$2,000,000:**

Value	Pre-Construction		Construction Manager Fee for Construction (*)
	Start at or prior to 30% Design (or SD & DD phases)	Start between 30% & 60% Design	
	[ \$ ]	[ \$ ]	[ % ]
\$1,000,000 - \$1,200,000	<b>\$18,000.00</b>	<b>\$15,600.00</b>	<b>12%</b>
\$1,200,001 - \$1,400,000	<b>\$21,000.00</b>	<b>\$18,200.00</b>	<b>12%</b>
\$1,400,001 - \$1,600,000	<b>\$24,000.00</b>	<b>\$20,800.00</b>	<b>12%</b>
\$1,600,001 - \$1,800,000	<b>\$27,000.00</b>	<b>\$23,400.00</b>	<b>12%</b>
\$1,800,001 - \$2,000,000	<b>\$30,000.00</b>	<b>\$26,000.00</b>	<b>12%</b>

(\*) – Construction Manager's Fee for Construction shall be the percentage of Cost of Work.

**Labor Burden Rate: 1.40**

**Estimated Burden (Max allowed per SBBC = 40%):**

Paid Time Off 19.59%  
 FICA 6.20%  
 Medicare 1.45%  
 State Unemployment 3.08%  
 Federal Unemployment 0.18%  
 Major Medical 8.50%  
 Workmen's Comp 1.00%  
**Total 40.0%**

**Liquidated Damages\* for Substantial Completion (per day): \$300.00 - \$500.00**

**Liquidated Damages\* for Final Completion (per day): \$300.00 - \$500.00**

\*Liquidated Damages will be determined per project, but will be in the range shown.

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

**SUPPLIER DIVERSITY & OUTREACH PROGRAM**

A DIVISION OF  
PROCUREMENT & WAREHOUSING SERVICES

This Certifies

**Asset Builders LLC d/b/a Messam Construction**

has met the requirements for certification established by the Supplier Diversity & Outreach Program of the School Board of Broward County as a

**African-American**

**(M/WBE)**

**12/23/2016**

Effective Date

**12/23/2019**

Expiration Date



**7007-6113 07**

Certification Number

*Colleen M Robbs*

Colleen M. Robbs, Supplier Diversity & Outreach  
Coordinator





# THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

**SUPPLIER DIVERSITY & OUTREACH PROGRAM**  
7720 W. Oakland Park Blvd., Suite 323  
Sunrise, FL 33351  
754-321-0550

## SCHOOL BOARD

*Chair* **ABBY M. FREEDMAN**  
*Vice Chair* **NORA RUPERT**  
**ROBIN BARTLEMAN**  
**HEATHER P. BRINKWORTH**  
**PATRICIA GOOD**  
**DONNA P. KORN**  
**LAURIE RICH LEVINSON**  
**ANN MURRAY**  
**DR. ROSALIND OSGOOD**

**ROBERT W. RUNCIE**  
Superintendent of Schools

December 23, 2016

Asset Builders LLC d/b/a Messam Construction  
Ms. Angela Messam  
3600 Red Road, Suite 303  
Miramar, FL 33025

Dear Ms. Messam :

## CONGRATULATIONS!

Your application for certification as a Minority/Women Business Enterprise (M/WBE) is approved. The enclosed certificate becomes valid when bids are advertised within your area of specialty. The Purchasing & Warehousing Services Department has entered into an agreement with DemandStar.com, a government bid service provider. Although it is not necessary to be registered with them to do business with The School Board of Broward County, Florida (SBBC), being a member of the DemandStar.com network provides many benefits. For more information on DemandStar.com, you may contact them at (800) 711-1712 or at [www.demandstar.com](http://www.demandstar.com). If your firm is qualified in the construction arena please visit <http://www.broward.k12.fl.us/supply/sdop/construction-contracts.html> for further assistance.

We encourage you to become an active bidder in the contracting and subcontracting opportunities with the SBBC. The following data reflects the manner in which your company is listed in the School Board's database.

**Certificate Number:** 7007-6113 07  
**Certification Status:** Dec 23, 2016 until Dec 23, 2019  
**Minority Status:** African-American (M/WBE)  
**Trade or Service:** General Construction  
Construction Management  
Project Management  
LEED Consultant  
General Contractor

Your certification is valid for a three (3) year period, and it is subject to review in order to verify continued eligibility. Should any change occur which may adversely affect the minority status of your company, please notify the Supplier Diversity & Outreach Program Office within fifteen (15) calendar days. Failure to do so may result in de-certification of your minority/women certification status.

Should you have any questions regarding your certification status with the SBBC, please feel free to contact me at (754) 321-0540.

Sincerely,

Colleen M. Robbs, Supplier Diversity & Outreach Coordinator  
Procurement & Warehousing Services

Enclosure

EXHIBIT D  
CMAR RFQ Document

To be added at contract execution