REVISED

AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.: EE-21.

MEETING DATE	2018-05-08 10:05 - School Board Operational Meeting
AGENDA ITEM	ITEMS
CATEGORY	EE. OFFICE OF STRATEGY & OPERATIONS
DEPARTMENT	Procurement & Warehousing Services

Special Order Request ○ Yes ◉ No

Time

Open Agenda ◉ Yes ○ No

TITLE:

Recommendation of $500,000 or Greater - 18-171F - Construction Services Emergency Projects (CSEP)

REQUESTED ACTION:

Approve the recommendation to award the above Invitation to Bid (ITB). Contract term: May 23, 2018 through May 22, 2021, 3 Years; 1 Year renewal at Owner's option; User Department: Office of Facilities and Construction: Award Amount: Indicated in Exhibit 2; Awarded Vendor(s): 17; Small/Minority/Women Business Enterprise Vendor(s): 8.
See supporting Docs for continuation of Requested Action.

SUMMARY EXPLANATION AND BACKGROUND:

The School Board of Broward County, Florida (SBBC), received nineteen (19) bids for ITB 18-171F - Construction Services Emergency Projects (CSEP). These awards establish multiple Continuing Contracts for Construction Services Emergency Projects in accordance with the bidding documents in an effort to create a pool of pre-qualified contractors to respond only in the event of a declared emergency.
These Agreements have been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:

○ Goal 1: High Quality Instruction ◉ Goal 2: Continuous Improvement ○ Goal 3: Effective Communication

FINANCIAL IMPACT:

The Executive Summary and the Recommendation Tabulation provide a "not to exceed limits" clause. The total payments shall not exceed the limits of $2,000,000 to $50,000,000 as detailed in Exhibit 2. In the event of a declared emergency, funding for these services would come from the District reserves and staff would seek reimbursements from the Federal Emergency Management Agency, the District's excess insurance carriers, or other appropriate agencies.

EXHIBITS: (List)

(1) Continuation of Requested Action (2) Executive Summary (3) Recommendation Tabulation (4) Financial Analysis Worksheet (5) Memo to Revise

BOARD ACTION:

APPROVED

(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Frank L. Girardi	Phone: 754-321-2617
Name: Mary C. Coker	Phone: 754-321-0505

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Senior Leader & Title

Maurice L. Woods - Chief Strategy & Operations Officer

Signature

Maurice Woods
5/7/2018, 4:32:50 PM

Electronic Signature

Approved In Open Board Meeting On: MAR 0 8 2018

By: Nora Rupert
School Board Chair

Form #4189 Revised 08/04//2017
RWR/ MLW/MCC/FLG:lp

CONTINUATION OF REQUESTED ACTION

Vendors awarded:

1. Advanced Roofing, Inc.
2. Atlas Apex Roofing, LLC
3. Bass-United Fire & Security Systems, Inc.
4. Blizzard Air Conditioning, LLC **
5. Caliste Construction, LLC **
6. D. Stephenson Construction, Inc. **
7. Fastrack Management & Consulting, Inc.
8. Grace & Naeem Uddin, Inc. **
9. H.A. Contracting Corp.
10. Koldaire, Inc. **
11. Lebolo Construction Management, Inc. **
12. Lego Construction Co. **
13. Lunacon Engineering Group, Corp. **
14. Mbr Construction, Inc.
15. Mrse LLC
16. Thermal Concepts, Inc.
17. Universal Electric of Florida, Inc.

** *Small/Minority/Women Business Enterprise Certified Vendor(s)*

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT

ROBERT W. RUNCIE
SUPERINTENDENT OF SCHOOLS

May 7, 2018

TO: School Board Members

FROM: Maurice L. Woods
Chief Strategy & Operations Officer

VIA: Robert W. Runcie
Superintendent of Schools

SUBJECT: **REVISION TO EE-21, RECOMMENDATION OF $500,000 OR GREATER - 18-171F - CONSTRUCTION SERVICES EMERGENCY PROJECTS (CSEP), FOR THE MAY 8, 2018, SCHOOL BOARD OPERATIONAL MEETING**

Attached is a revision for EE-21, Recommendation of $500,000 or Greater - 18-171F - Construction Services Emergency Projects (CSEP), for the May 8, 2018, School Board Operational Meeting.

- Revised Executive Summary
- Added 17 contracts
- Revised Recommendation Tabulation

RWR/MLW/MCC:bm
Attachments

cc: Senior Leadership Team

REVISED

EXECUTIVE SUMMARY

Recommendation to Approve Agreement
18-171F - Construction Services Emergency Projects (CSEP)

This request is to approve multiple Continuing Contracts for Construction Services Emergency Projects (CSEP) with each company listed in Table A. The purpose of this bid is to pre-position contracts for open-end construction services and other related services, as needed, when needed, in response to declared emergencies, and award multiple term contracts for construction services for emergency repairs.

The contract will provide all necessary materials, equipment, utilities, machinery, tools, apparatus, means of transportation and labor necessary to complete the work known particularly as:

- General Contractor
- Roofing Contractor
- Electrical Contractor
- Fire Alarm Contractor
- Mechanical Contractor

Invitation to Bid (ITB) number 18-171C was advertised on March 28, 2018. There were 2080 vendors notified. Sixty-three (63) vendors downloaded the ITB. Nineteen (19) proposals were received, including eight (8) S/M/WBE's.

Pre-qualification with the School Board of Broward County, Florida (SBBC), at time of bid submittal, is a mandatory requirement in order to be able to participate in this solicitation. As such, Procurement & Warehousing Services (PWS) took the initiative and is continually reaching out to the community of all pre-qualified contractors with the District to engage and to participate in this solicitation. Through these outreach efforts, PWS intends to stimulate vendor participation and anticipates an increase in open and fair competitions.

The staff has continuously ensured that Continuing Contracts are in place in order to timely respond to needs for construction and related services in response to declared emergencies. This provides immediate access to the needed resources. Since January of this year, PWS has been working with the different stakeholders on ensuring that the solicitation and bid documents are in compliance with Federal Emergency Management Agency (FEMA) and federal requirements. Risk Management has reviewed the solicitation and contract to ensure FEMA and Federal requirements compliance. Due to the uniqueness of this solicitation (may be fully or partially funded with Federal money), the standard construction contract documents that the district uses had to be revised to include FEMA recommended clauses.

Project funding for these services would come from district reserves and staff would seek reimbursements from FEMA, the District's excess insurance carriers, or other appropriate agencies. Projects not exceeding the contract limit in construction cost for the service category may be assigned to an open-end CSEP Contractor. Project assignments are processed in the form of a Notice To Proceed (NTP) and do not require School Board approval subsequent to the award of the contract in this item. Costs are based on R.S. Means Facilities Cost Data, which is the current industry standard, with a multiplier (discount). Work commences upon the issuance of a fully-executed NTP and purchase order.

The total payments to the CSEP 2018 Contractors shall not exceed the limits detailed in Table B by the different trades awarded. Fees and other cost are paid to CSEP Contractors upon issuance of a fully executed NTP and Purchase Order (PO), and performance of the work. If no NTP and PO is issued, there is no entitlement to the CSEP Contractors for any payments.

Financial Impact

There is no spending authority requested with this item.

Table A

Vendor Name	S/M/WBE Certification	Category	Item(s) Awarded
ADVANCED ROOFING, INC.	NO	General Contractor Roofing Contractor Mechanical Contractor	1 and 2 1 and 2 1 and 2
ATLAS APEX ROOFING, LLC.	NO	Roofing Contractor	1 and 2
BASS-UNITED FIRE & SECURITY SYSTEMS, INC.	NO	Fire Alarm Contractor	1 and 2
BLIZZARD AIR CONDITIONING, LLC.	YES	Mechanical Contractor	1 and 2
CALISTE CONSTRUCTION, LLC.	YES	General Contractor	1 and 2
D. STEPHENSON CONSTRUCTION, INC.	YES	General Contractor	1 and 2
FASTRACK MANAGEMENT & CONSULTING, INC.	NO	General Contractor	1 and 2
GRACE & NAEEM UDDIN, INC.	YES	General Contractor	1 and 2
H.A. CONTRACTING CORP.	NO	General Contractor	1 and 2
KOLDAIRE, INC.	YES	General Contractor Mechanical Contractor	1 1 and 2
LEBOLO CONSTRUCTION MANAGEMENT, INC.	YES	General Contractor	1 and 2
LEGO CONSTRUCTION CO.	YES	General Contractor	1 and 2
LUNACON CONSTRUCTION GROUP, CORP.	YES	General Contractor	1 and 2
MBR CONSTRUCTION, LLC.	NO	General Contractor ~~Roofing Contractor~~ ~~Electrical Contractor~~ ~~Fire Alarm Contractor~~ ~~Mechanical Contractor~~	1 ~~1~~ ~~1~~ ~~1~~ ~~1~~
MRSE LLC	NO	Mechanical Contractor	1 and 2
THERMAL CONCEPTS, INC.	NO	Mechanical Contractor	1 and 2
UNIVERSAL ELECTRIC OF FLORIDA, INC.	NO	Electrical Contractor Fire Alarm Contractor	1 and 2 1 and 2

Table B

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Multiplier	0.864	Multiplier	0.864
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Multiplier	0.867	Multiplier	0.867
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Multiplier	0.894	Multiplier	0.894
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Multiplier	0.795	Multiplier	0.795
	Contract Amount	$2,000.000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Multiplier	0.800	Multiplier	0.800
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

PROCUREMENT & WAREHOUSING SERVICES

FINANCIAL ANALYSIS WORKSHEET

BID INFORMATION			
New Bid # (Ex: 10-004R):	18-171F	Preparation Date:	March 28, 2018
Previous Bid # (Ex: 10-004R):	14-073F	Buyer/PA:	LUIS PEREZ
New Bid Award Total:		Bid Title:	CONSTRUCTION SERVICES EMERGENCY PROJECTS
Previous Award Total:	$4,000,000		
Bid Type:			
Previous Bid Term (Start Date):	5/20/2014	New Bid Term (In Months):	36
Previous Bid Term (End Date):	5/19/2018	# of Months Into Bid:	46

SPEND REPORTING	
Purchase Order(s) Spend:	$215,661
P Card Purchases:	$0
Total Invoiced-to-Date Amount (PO + Pcard Purchases):	$215,661
Average Monthly Expenditure:	$4,688
Unused Authorized Spending:	$3,784,339
Est. Forecasted Spend (For Entire Bid Term):	$168,778

VENDOR INFORMATION			
Awarded Vendors:		M/WBE Status (If applicable):	Spend:
100628	ADVANCED ROOFING INC		$ 122,850
105998	D STEPHENSON CONSTRUCTION INC		$ 92,811
		PO VENDOR SPEND:	$ 215,661
		P-CARD SPEND:	$ -
		TOTAL SPEND:	$ 215,661

NOTES (Type Below):

Data Source: SAP and Works (Bank of America system)	Prepared on:	3/5/2018

All information included in this summary is based on the preparation date listed above and may change at any time beyond that date.

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

ADVANCED ROOFING, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	0.864
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	0.867	Single Fixed Multiplier (SFM)	0.867
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	0.800	Single Fixed Multiplier (SFM)	0.800
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	ADVANCED ROOFING, INC.	1950 NW 22ND STREET FORT LAUDERDALE, FL 33311
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, ADVANCED ROOFING, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

ADVANCED ROOFING, INC.

By _____
Robert P. Kornahrens, President

_____, Secretary

-Or-

_____
Witness Kim Campanile

_____
Witness Faith Williams

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 2nd day of May, 2018 by Robert P. Kornahrens of Advanced Roofing, Inc., and, of _____, on behalf of the Contractor. Robert P. Kornahrens, and, _____ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

DEBRA A. GIULIANI
MY COMMISSION # GG 047312
EXPIRES: March 14, 2021
Bonded Thru Notary Public Underwriters

(SEAL)

_____
Signature – Notary Public

Debra A. Giuliani
Printed Name of Notary

GG 047312
Notary's Commission No.

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

SURETY: The Guarantee Company of North America USA

By: William Grefe Griffin

Surety Witness

Its: Attorney-in-Fact

Date: **05/01/2018**

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by William Grefe Griffin of American Global, LLC, on behalf of the Surety.

He/she is personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires: March 24, 2019

(SEAL)

TORRE TAYLOR
MY COMMISSION #FF213292
EXPIRES: MAR 24, 2019
Bonded through 1st State Insurance

Signature – Notary Public

Torre Taylor
Printed Name of Notary

FF213292
Notary's Commission No.

END OF DOCUMENT

THE GUARANTEE™

The Guarantee Company of North America USA
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

Michael Marino, William Grefe Griffin, Torre Taylor, Ricardo Davila Lamar, Elizabeth De La Caridad Lang
American Global, LLC

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon **THE GUARANTEE COMPANY OF NORTH AMERICA USA** as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of **THE GUARANTEE COMPANY OF NORTH AMERICA USA** at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, **THE GUARANTEE COMPANY OF NORTH AMERICA USA** has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 2nd day of October, 2015.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

Stephen C. Ruschak, President & Chief Operating Officer **Randall Musselman, Secretary**

STATE OF MICHIGAN
County of Oakland

On this 2nd day of October, 2015 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of said company.

Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2018
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

Cynthia A. Takai

I, Randall Musselman, Secretary of **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, which is still in full force and effect.

IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 1st day of May, 2018

Randall Musselman, Secretary

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

ATLAS APEX ROOFING, LLC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	0.867	Single Fixed Multiplier (SFM)	0.867
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	ATLAS APEX ROOFING, LLC.	281 NE 32ND STREET FT LAUDERDALE, FL 33334
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

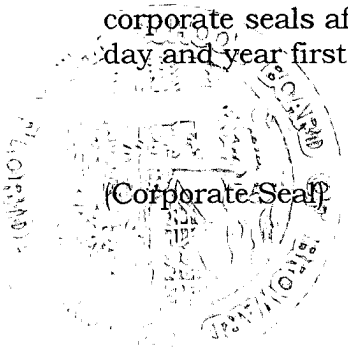
16.01 Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from The School Board of Broward County, Florida.

ARTICLE 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, ATLAS APEX ROOFING, LLC. and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.



(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

(Corporate Seal)

CONTRACTOR

[Atlas Apex Roofing, LLC]

By: _____
David Gembala , President

_____
, Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF **FLORIDA**

COUNTY OF **BROWARD**

The foregoing instrument was acknowledged before me this **1ST** day of **MAY**, **2018** by **DAVID GEMBALA** of **ATLAS APEX ROOFING, LLC**, and, _____ of _____, on behalf of the Contractor.

_____, and, _____ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:
DECEMBER 14, 2020

_____
Signature – Notary Public

(SEAL)

DIANA MAGLIARISI
MY COMMISSION # GG 047878
EXPIRES: December 14, 2020
Bonded Thru Notary Public Underwriters

DIANA MAGLIARISI
Printed Name of Notary

GG 047878
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY: Philadelphia Indemnity Insurance Company

By: Derek Lipschutz

Its: **Specialty Regional Manager, Surety Division**

Date: **May 4, 2018**

STATE OF FLORIDA

COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 4TH day of MAY, 2018, by Derek Lipschutz of Philadelphia Indemnity Insurance Company, on behalf of the Surety. He/she is **personally known to me** or produced N/A as identification and did/did not first take an oath.

My commission expires: March 19, 2022

(SEAL)

DEBORAH TRITT
Commission # GG 171377
Expires March 19, 2022
Bonded Thru Budget Notary Services

Signature – Notary Public

Deborah Tritt
Printed Name of Notary

GG 171377
Notary's Commission No.

END OF DOCUMENT

PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That **PHILADELPHIA INDEMNITY INSURANCE COMPANY** (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint **Sandra Benford, Terri Hunt, Theodore Guidry III, Sheila Dickerson, Derek Lipschutz, Christopher Gagnon, Deborah Ann Tritt, of Philadelphia Indemnity Insurance Company,** its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed **$Unlimited**.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEALTO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27TH DAY OF OCTOBER, 2017.

(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 27th day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the **PHILADELPHIA INDEMNITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Morgan Knapp, Notary Public
Lower Merion Twp., Montgomery County
My Commission Expires Sept. 25, 2021
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

(Notary Seal)

Notary Public: Morgan Knapp
residing at: Bala Cynwyd, PA
My commission expires: September 25, 2021

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27th day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 4th day of May, 2018.

Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

BASS-UNITED FIRE & SECURITY SYSTEMS, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $50,000,000 $10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $50,000,000 $10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.795 $2,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.795 $4,000,000 $1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	BASS-UNITED FIRE & SECURITY SYSTEMS, INC.	3000 Gateway Drive POMPANO BEACH, FL 33069
Surety:	FCCI Insurance Company	6300 University Pkwy, Sarasota, FL 34240
Surety's Agent:	Craig Johnson, President	
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, BASS-UNITED FIRE & SECURITY SYSTEMS, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

[NAME OF CONTRACTOR]

By _____, President

_____, Secretary

- Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 1st day of May, by Brad Higdon of Bass-United Fire + Security Systems, INC. and, _____ of _____, on behalf of the Contractor. Brad Higdon, and, _____ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

_____
Signature – Notary Public

(SEAL)

Andrea Sheahan
Printed Name of Notary

_____
Notary's Commission No.

ANDREA SHEAHAN
Notary Public - State of Florida
Commission # FF 948466
My Comm. Expires Jan 15, 2020
Bonded through National Notary Assn.

SURETY ACKNOWLEDGMENT

SURETY ACKNOWLEDGMENT

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

SURETY: FCCI Insurance Company

FCCI Insurance Company

_____

_____

By: Sharon R Myers
Sharon R Myers
Its: Attorney-in-Fact

Date: 5/1/2018

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 1ST day of MAY, 2018 by Sharon R Myers of Frank H. Furman, Inc, on behalf of the Surety.

He/she is personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

(SEAL)

Jeffrey V. Gillispie
Signature – Notary Public

Printed Name of Notary

JEFFREY V. GILLISPIE
Commission # GG 074913
Expires May 31, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

Notary's Commission No.

END OF DOCUMENT

10-00057826

FCCI INSURANCE GROUP

More than a policy. A promise.

GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Dirk D DeJong; Dora Villavicencio; Sharon R. Myers; Tina Shannon

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed $7,500,000): $7,500,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 25TH day of September, 2016.

Attest: Craig Johnson
Craig Johnson, President
FCCI Insurance Company

FCCI INSURANCE COMPANY CORPORATE SEAL 1994 FLORIDA

Thomas A. Koval Esq., EVP, Chief Legal Officer,
Government Affairs and Corporate Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Craig Johnson, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2020

Arlene Alonso
Notary Public, State of Florida
Commission No.GG 19777
My Commission Expires: 09/25/20

Arlene Alonso
Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Thomas A. Koval, Esq., who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2020

Arlene Alonso
Notary Public, State of Florida
Commission No.GG 19777
My Commission Expires: 09/25/20

Arlene Alonso
Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 24, 2011 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 1st day of May, 2018

Thomas A. Koval, Esq., EVP, Chief Legal Officer,
Government Affairs and Corporate Secretary

1-IONA-3592-NA-04, 8/16

HEAT SENSITIVE SHIELD • FADES WITH HEAT OR TOUCH

DocuGard #04546 contains a security pantograph, blue background, heat-sensitive ink, coin-reactive watermark, and microtext printing on border.

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

BLIZZARD AIR CONDITIONING LLC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $50,000,000 $10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $50,000,000 $10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $2,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.800 $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.800 $8,000,000 $2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal, business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	BLIZZARD AIR CONDITIONING LLC.	14346 SW 157 STREET MIAMI, FL 33177
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, BLIZZARD AIR CONDITIONING LLC, and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

[NAME OF CONTRACTOR]

By Blizzard Air Conditioning, LLC
Roberto Villaverde, President

Alexandra Gantus
, Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Miami Dade County

The foregoing instrument was acknowledged before me this 3rd day of May, 2018 by Roberto Villaverde of Blizzard Air Conditioning, LLC, and, _____ of _____, on behalf of the Contractor.

_____, and, Roberto Villaverde personally known are personally known to me or produced N/A as identification and did/did not first take an oath.

My commission expires: December 26, 2018

(SEAL)

LARISSA T. GANTUS ARENAS
MY COMMISSION # FF 181840
EXPIRES: December 26, 2018
Bonded Thru Budget Notary Services

Signature – Notary Public

Larissa T. Gantus Arenas
Printed Name of Notary

F 181840
Notary's Commission No.

SURETY ACKNOWLEDGMENT

SURETY ACKNOWLEDGMENT

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

SURETY: Lexon Insurance Company

Barr Bart

By: _____

Burton Harris,

Its: **Attorney-In-Fact**

Date: May 3, 2018

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 3rd day of May, 2018 by Burton Harris of Security Bond Associates, Inc., on behalf of the Surety. He/she is personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

(SEAL)

ODALIS CABRERA
MY COMMISSION #FF161167
EXPIRES December 21, 2018
(407) 398-0153 FloridaNotaryService.com

Signature – Notary Public

Odalis Cabrera
Printed Name of Notary

FF161167
Notary's Commission No.

END OF DOCUMENT

POWER OF ATTORNEY

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Burton Harris, Christine Harris, Marina Ramil, Odalis Cabrera its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $2,500,000.00, Two Million Five Hundred Thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY

BY _____
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY _____
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 3rd Day of May, 2018.

BY _____
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

CALISTE CONSTRUCTION, LLC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.864 $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.864 $50,000,000 $10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $50,000,000 $10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $2,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	CALISTE CONSTRUCTION, LLC	633 NORTHEAST 167 STREET SUITE 315 NORTH MIAMI BEACH, FL 33162
Surety:	The Cincinnati Insurance Company	6200 S. Gilmore Rd, Fairfield, OH 45014
Surety's Agent:	Stephen A. Ventre	
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, CALISTE CONSTRUCTION, LLC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

[NAME OF CONTRACTOR]

By Wayne Caliste
, President

, Secretary

Or -

Lance A. Jones
Witness

Ada Charles
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 3 day of May, 2018 by Wayne Caliste of Caliste Construction LLC, and, Lance A. Jones of Caliste Construction LLC, on behalf of the Contractor.
Wayne Caliste, and, Lance A. Jones are personally known to me or produced FIDL as identification and did/did not first take an oath.

My commission expires: 11/29/2019

Signature – Notary Public

(SEAL)

DEATRICK PRINCE
Printed Name of Notary

Deatrick R. Prince
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF922865
Expires 11/29/2019

FF922865
Notary's Commission No.

SURETY ACKNOWLEDGMENT

The Surety acknowledges that it has read the foregoing Construction Contract and has familiarized itself with the obligations of the Contractor and the Surety as stated therein, which

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

SURETY: The Cincinnati Insurance Company

Witness

Witness

By: _____

Its: **Jarrett Merlucci, Attorney In Fact**

Date: **May 3, 2018**

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 3rd day of May, 2018 by Jarrett Merlucci of Miami, FL, on behalf of the Surety.

He/she is personally known to me or produced personally known as identification and did/did not first take an oath.

My commission expires:

KRISTI MESSEL
MY COMMISSION # GG 138793
EXPIRES: November 14, 2021
Bonded Thru Notary Public Underwriters

(SEAL)

_____
Signature – Notary Public

Kristi Messel
Printed Name of Notary

GG138793
Notary's Commission No.

END OF DOCUMENT

THE CINCINNATI INSURANCE COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Charles J. Nielson; David R. Hoover; Kevin R. Wojtowicz; Charles D. Nielson; Daniel F. Oaks; Laura D. Mosholder; Don Bramlage; Emily Golecki; Jarrett Merlucci; Shawn A. Burton; Edward M. Clark; Jessica P. Reno; Ian A. Nipper and/or Joseph P. Nielson

of Miami Lakes, Florida its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Any such obligations in the United States, up to
Twenty Million and No/100 Dollars ($20,000,000.00).

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

"RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

"RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 8th day of March, 2017.

THE CINCINNATI INSURANCE COMPANY

Stephen A. Dutta

Vice President

STATE OF OHIO)
ss:
COUNTY OF BUTLER)

On this 8th day of March, 2017, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.

Mark J. Huller

MARK J. HULLER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration
date. Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio.

this 3rd day of May 2018

Steven D. Dan

Secretary

BN-1005 (3/17)

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

D. STEPHENSON CONSTRUCTION, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	0.864
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	D. STEPHENSON CONSTRUCTION, INC.	6241 NORTH DIXIE HIGHWAY SUITE 100 FORT LAUDERDALE, FL 33334
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, D. STEPHENSON CONSTRUCTION, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

D. Stephenson Construction, Inc.

By _____
Dwight Stephenson, CEO

_____
Dinah Stephenson, Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 3 day of May, 2018 by Dwight Stephenson of D. Stephenson Construction, Inc. and, Dinah Stephenson of D. Stephenson Construction, on behalf of the Contractor. Dwight Stephenson, and, Dinah Stephenson are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires: 7/13/2020

(SEAL)

NELLY GARCIA-LUGO
My Comm. Exp. Jul 13, 2020
NO. GG 010949
NOTARY PUBLIC
STATE OF FLORIDA

_____
Signature - Notary Public

Nelly Garcia-Lugo
Printed Name of Notary

GG010949
Notary's Commission No.

SURETY ACKNOWLEDGMENT

SURETY ACKNOWLEDGMENT

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

SURETY: QBE Insurance Corporation

_____ **By:** Brett A Ragland

_____ **Its:** Brett A. Ragland, Attorney-in-Fact

Date: May 2, 2018

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 2nd day of May, 2018 by Brett A. Ragland of Johnson & Company, on behalf of the Surety.

(He)/she is personally known to me or produced Personally Known as identification and did/(did not) first take an oath.

My commission expires: July 10, 2019

(SEAL)

KANANI CORDERO
MY COMMISSION # FF236662
EXPIRES July 10, 2019
(407) 398-0153 FloridaNotaryService.com

Kanani Cordero
Signature – Notary Public

Kanani Cordero
Printed Name of Notary

FF236662 Expires: July 10, 2019
Notary's Commission No.

END OF DOCUMENT

QBE

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE BLUE BORDER

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS, that QBE Insurance Corporation (the "Company"), a corporation duly organized and existing under the laws of the State of Pennsylvania, having its principal office at 55 Water Street 20th Floor, New York, NY 10041, has made, constituted and appointed, and does by these presents make, constitute and appoint **Joseph Daniel Johnson Jr., Joseph Daniel Johnson III and Brett A. Ragland of Joseph D. Johnson & Company of Orlando, Florida** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of financial guaranty insurance, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of New York, without giving effect to the principles of conflict of laws. This Power of Attorney is granted pursuant to the following resolutions, which were duly and validly adopted at a meeting of the Board of Directors of the Company with effect from June 30, 2014:

RESOLVED, that the Chief Executive Officer, any President, any Executive Vice President, any Senior Vice President, any Vice President, the Corporate Secretary or any Assistant Corporate Secretary is authorized to appoint one or more Attorneys-in-Fact and agents to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time;

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking will be valid and binding upon the Company when (a) signed by any of the aforesaid authorized officers; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and agents pursuant to the power prescribed in his/her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and

FURTHER RESOLVED, that the signature of any authorized officer and the seal of the Company may be drawn on or affixed by facsimile or electronically transmitted by email to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company, and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile or electronically reproduced signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this December 15, 2017.

Attest:

(Seal)

By: Brett Halsey
Brett Halsey
Senior Vice President

QBE INSURANCE CORPORATION

By: Matt
Matt Curran
Senior Vice President

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

On this December 15, 2017, before me personally appeared Brett Halsey and Matt Curran, both to me known to be Senior Vice Presidents of QBE Insurance Corporation, and that each, as such, being authorized to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporation by each as a duly authorized officer.

Harpreet Kaur Mann
Notary Public, State of New York
No. 02MA6335099
Qualified in New York County
Commission Expires December 28, 2019

By: Harpreet Mann
Harpreet Kaur Mann, Notary Public

CERTIFICATE

I, Jose Ramon Gonzalez, Jr., the undersigned, Corporate Secretary of QBE Insurance Corporation do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth herein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 2nd day of May 2018.

(Seal)

By: J. R. G. Jr.
Jose Ramon Gonzalez, Jr., Corporate Secretary

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this _____ day of_____,_____ by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

FASTRACK MANAGEMENT & CONSULTING, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.864 $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.864 $50,000,000 $10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $50,000,000 $10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $2,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	FASTRACK MANAGEMENT & CONSULTING, INC.	3233 COMMERCE PLACE SUITE C WEST PALM BEACH, FL 33407
Surety:	Berkley Insurance Company	475 Steamboat Road Greenwich, CT 06830
Surety's Agent:	Jeffrey M. Hafter	
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, FASTRACK MANAGEMENT & CONSULTING, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be

IN WITNESS THEREOF, the said Contractor, FASTRACK MANAGEMENT & CONSULTING, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

[NAME OF CONTRACTOR]

By Blanca Diamond
BLANCA DIAMOND, President

Sasha Bubanja, Secretary

Or -

Witness

Witness

CONTRACTOR NOTARIZATION

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 2 day of May, 2018 by BLANCA DIAMOND, PRESIDENT of FASTRACK MANAGEMENT & CONSULTING, INC., and, SASHA BUBANJA of FASTRACK MANAGEMENT & CONSULTING INC. on behalf of the Contractor. BLANCA DIAMOND, and, SASHA BUBANJA are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

Notary Public State of Florida
Debbie S Sprague
My Commission FF 980632
Expires 06/01/2020
(SEAL)

Debbie S Sprague
Signature – Notary Public

DEBBIE SPRAGUE
Printed Name of Notary

FF 980632
Notary's Commission No.

SURETY ACKNOWLEDGMENT

SURETY ACKNOWLEDGMENT

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

SURETY: BERKLEY INSURANCE COMPANY

Barbara Morris

Heather Rile

By: _____
Joseph D. Johnson, Jr.
Its: Attorney-in-Fact & Florida Resident Agent

Date: 05/02/2018

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 2nd day of May, 2018 by Joseph D. Johnson, Jr. of Orlando, Florida, on behalf of the Surety.

He/she is personally known to me or produced Personally Known as identification and did/did not first take an oath.

My commission expires: July 12, 2021

JOANN H. BEBOUT
Commission # GG 088263
Expires July 12, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

(SEAL)

Joann H. Bebout
Signature – Notary Public

JoAnn H. Bebout
Printed Name of Notary

GG 088263
Notary's Commission No.

END OF DOCUMENT

No. BI-10099d

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: ***Joseph D. Johnson, Jr.; Brett A. Ragland; Francis T. O'Reardon; Joseph D. Johnson, III; JoAnn H. Bebout; Kanani H. Cordero; or Tyler Ragland of Joseph D. Johnson & Company of Orlando, FL*** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.$100,000,000.00),** to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company 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 Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 29th day of March 2018.

Attest: Berkley Insurance Company

(Seal)

By _____ By _____
Ira S. Lederman Jeffrey M. Hafter
Senior Vice President & Secretary Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 29th day of March, 2018, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDBAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2019

_____
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 2nd day of May, 2018.

(Seal)

_____
Vincent P. Forte

WARNING – Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2015 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

GRACE & NAEEM UDDIN, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.864 $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	0.864 $50,000,000 $10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $10,000,000 $2,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $50,000,000 $10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $2,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $4,000,000 $1,000,000	Single Fixed Multiplier (SFM) Contract Amount Renewable Amount	_____ $8,000,000 $2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	GRACE & NAEEM UDDIN, INC.	833 SHOTGUN RD. SUNRISE, FL 33326
Surety:	Hartford Casualty Insurance Company	One Hartford Plaza Hartford, Connecticut 06155
Surety's Agent:	M. Ross Fisher	
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, GRACE & NAEEM UDDIN, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

Grace & Naeem Uddin, Inc

(Corporate Seal) **[NAME OF CONTRACTOR]**

By _____
Graciela Beltran-Uddin, President

_____
, Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF **FLORIDA**

COUNTY OF **BROWARD**

The foregoing instrument was acknowledged before me this **1st** day of **May**, **2018** by Graciela Beltran-Uddin, President of **Grace & Naeem Uddin, Inc.**, and, _____ of _____, on behalf of the Contractor. **Graciela Beltran-Uddin**, and, _____ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

ADRIANA FERNANDEZ
MY COMMISSION # FF 899426
EXPIRES: September 1, 2019
Bonded Thru Notary Public Underwriters

(SEAL)

_____
Signature – Notary Public

Adriana Fernandez
Printed Name of Notary

FF899426
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY:

By: _____

Its: Charles J. Nielson, Attorney In Fact

Date: May 1st, 2018

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by Charles J. Nielson, Attorney In Fact of Hartford Casualty Insurance Company, on behalf of the Surety.

He/she is personally known to me or produced personally known as identification and did/did not first take an oath.

My commission expires:

(SEAL)

_____
Signature – Notary Public

Kristi Messel
Printed Name of Notary

GG138793
Notary's Commission No.

KRISTI MESSEL
MY COMMISSION # GG 138793
EXPIRES: November 14, 2021
Bonded Thru Notary Public Underwriters

END OF DOCUMENT

POWER OF ATTORNEY

Direct Inquiries/Claims to:
THE HARTFORD
BOND, T-12
One Hartford Plaza
Hartford, Connecticut 06155
bond.claims@thehartford.com
call: **888-266-3488** *or fax:* **860-757-5835**

KNOW ALL PERSONS BY THESE PRESENTS THAT: **Agency Code: 21-229752**

- [X] **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [X] **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [X] **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- [ ] **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of the Southeast,** a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, ***up to the amount of unlimited:***

Charles J. Nielson, Mary C. Aceves, Charles D. Nielson, Joseph Penichet Nielson, David R. Hoover
of
Miami Lakes, FL

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on March 1, 2016 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.

John Gray, Assistant Secretary

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 5th day of April, 2016, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.

Nora M. Stranko
Notary Public
My Commission Expires March 31, 2018

CERTIFICATE

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of May 1, 2018 .

Signed and sealed at the City of Hartford.

Kevin Heckman, Assistant Vice President

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

H. A. CONTRACTING CORP.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	0.864
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup

proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current

Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue

performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and

any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

10.07.05 If an audit inspection or examination in accordance with this Article finds that Contractor overcharged Owner, the Contractor shall pay to Owner the Overcharged Amount, which is defined as the total aggregate overcharged amount, together with interest thereon, (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than $25,000.00, Contractor shall pay to Owner the Overcharged Amount and the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit costs, incurred as a result of its audit of Contractor and Owner. If such amounts owed Contractor are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then Contractor hereby acknowledges and agrees that it shall pay such remaining amounts; to Owner within seven (7) business days of its receipt of Owner's invoice or such remaining amounts.

In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		Address:
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351
Contractor:	H. A. CONTRACTING CORP.	9500 N. W. 12TH STREET BAY 1 MIAMI, FL 33172
Surety:	Hartford Fire Insurance Company	One Hartford Plaza Hartford, CT 06155
Surety's Agent:	Ross Fisher	
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

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IN WITNESS THEREOF, the said Contractor, H. A. CONTRACTING CORP., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal) **H.A. Contracting Corp.**

By _____
Henry Angelo III , President

_____
Nicholas Angelo , Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF ____Florida_____

COUNTY OF _____Dade_____

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by: Henry Angelo III of H.A. Contracting Corp., and, Nicholas Angelo of H.A. Contracting Corp., on behalf of the Contractor.
Henry Angelo III, and, Nicholas Angelo are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

_____
Signature – Notary Public

(SEAL)

MARY CEAVERS
MY COMMISSION # FF 176883
EXPIRES: March 5, 2019
Bonded Thru Notary Public Underwriters

MARY CEAVERS
Printed Name of Notary

Notary's Commission No.

SURETY ACKNOWLEDGMENT

SURETY ACKNOWLEDGMENT

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

SURETY: Hartford Fire Insurance Company

By: **Robert H. Benson**

Its: **Attorney In Fact**

Date: **May 1, 2018**

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by Robert H. Benson of Miami Shores, FL, on behalf of the Surety.

He/she is personally known to me or produced personally known as identification and did/did not first take an oath.

My commission expires:

(SEAL)

Signature - Notary Public

Printed Name of Notary

ADRIENNE J. LEITER
Commission # GG 193382
Expires May 4, 2022
Bonded Thru Troy Fain Insurance 800-385-7019

Notary's Commission No.

END OF DOCUMENT

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

KOLDAIRE, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	0.800	Single Fixed Multiplier (SFM)	0.800
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	KOLDAIRE, INC.	11955 NW 37TH STREET CORAL SPRINGS, FL 33065
Surety:	Berkley Insurance Company	475 Steamboat Road Greenwich, CT 06830
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, KOLDAIRE, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals

IN WITNESS THEREOF, the said Contractor, KOLDAIRE, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

KOLAIRE, INC.

By Frank O Monti Jr
, President

, Secretary

Or -

Witness

Witness

CONTRACTOR NOTARIZATION

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1 day of MAY, 2018 by FRANK O MONTI JR. of KOLDAIRE, INC., and, VALARIE L MONTI of KOLDAIRE, INC, on behalf of the Contractor.

FRANK O MONTT JR ,and, VALARIE L MONTI are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

Signature – Notary Public

Bridgit A Norris

Printed Name of Notary

GG107647

Notary's Commission No.

(SEAL)

BRIDGIT A. NORRIS
Notary Public - State of Florida
Commission # GG 107647
My Comm. Expires Jul 26, 2021
Bonded through National Notary Assn.

SURETY ACKNOWLEDGMENT

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

SURETY: BERKLEY INSURANCE COMPANY

By: Denise A. Chianese
Denise A. Chianese
Attorney-in-Fact

Its: _____

Date: **May 1, 2018**

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by Denise A. Chianese of Berkley Insurance Company on behalf of the Surety.

He/she is personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires: 7/16/21

(SEAL)

Maria Barnowksi
Signature – Notary Public

Maria Barnowksi
Printed Name of Notary

_____
Notary's Commission No.

END OF DOCUMENT

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

LEBOLO CONSTRUCTION MANAGEMENT, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	0.864
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	LEBOLO CONSTRUCTION MANAGEMENT, INC.	2100 CORPORATE DRIVE BOYNTON BEACH, FL 33426
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, LEBOLO CONSTRUCTION MANAGEMENT, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

[NAME OF CONTRACTOR]

By _____
Randall E. Lebolo, President

Juna K. Hagaman, Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF FLORIA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 1ST day of MAY, 2018 by RANDALL E. LEBOLO of LEBOLO CONSTRUCTION MANAGEMENT, INC., on behalf of the Contractor.
RANDALL E. LEBOLO is personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

_____
Signature – Notary Public

(SEAL)

DAWN M. HANCOX
Notary Public - State of Florida
My Comm. Expires Oct 4, 2018
Commission # FF 130030
Bonded Through National Notary Assn.

Dawn M. Hancox
Printed Name of Notary

_____
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY: United States Fire Insurance Company

By: _____

Its: **Charles J. Nielson, Attorney In Fact**

Date: **May 1, 2018**

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by Charles J. Nielson of Miami, FL, on behalf of the Surety. He/she is personally known to me or produced Personally Known as identification and did/did not first take an oath.

My commission expires:

(SEAL)

_____
Signature – Notary Public

Kristi Messel
Printed Name of Notary

11/14/2021
Notary's Commission No.

KRISTI MESSEL
MY COMMISSION # GG 138793
EXPIRES: November 14, 2021
Bonded Thru Notary Public Underwriters

END OF DOCUMENT

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: **Seven Million, Five Hundred Thousand Dollars ($7,500,000).**

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, 2019.

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 10th day of March, 2016.

UNITED STATES FIRE INSURANCE COMPANY

A. R. S.

Anthony R. Slimowicz, Senior Vice President

State of New Jersey}
County of Morris }

On this 10th 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

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 1st day of May 20 18

UNITED STATES FIRE INSURANCE COMPANY

A. Wright

Al Wright, Senior Vice President

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

LEGO CONSTRUCTION CO.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	0.864
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	LEGO CONSTRUCTION CO.	1011 Sunny Brook Road Suite 905 MIAMI, FL 33136
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, LEGO CONSTRUCTION CO., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

(Corporate Seal)

CONTRACTOR

LEGO Construction Co.

By Luis Garcia.
LEGO Construction Co. , President

_____
, Secretary

- Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 1st day of May., 2018 by Luis Garcia, President of LEGO Construction Co., and, _____ of _____, on behalf of the Contractor. Luis Garcia., and, _____ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires: DEC 5, 2021

_____
Signature – Notary Public

(SEAL)

YADIER ZARABOZO
Printed Name of Notary

YADIER ZARABOZO
Notary Public – State of Florida
Commission # GG 165769
My Comm. Expires Dec 5. 2021
Bonded through National Notary Assn.

GG165769
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY: Hartford Casualty Insurance Company

Olga Iglesias

Gicelle Pajon

By: _____

Its: **Charles J. Nielson, Attorney-In-Fact**

Date: **5/1/18**

STATE OF ___Florida_____

COUNTY OF ___ Miami-Dade_____

The foregoing instrument was acknowledged before me this 1st day of May, 2018, by Charles J. Nielson of Nielson, Hoover & Company, on behalf of the Surety.

He/she is personally known to me or produced (Personally Known) as identification and did/did not first take an oath.

My commission expires:

(SEAL)

_____
Signature – Notary Public

OLGA L IGLESIAS
NOTARY PUBLIC
STATE OF FLORIDA
NO. GG204944
MY COMMISSION EXPIRES MAY. 21, 2022

___Olga Igleisas_____
Printed Name of Notary

_____
Notary's Commission No.

END OF DOCUMENT

POWER OF ATTORNEY

Direct Inquiries/Claims to:
THE HARTFORD
BOND, T-12
One Hartford Plaza
Hartford, Connecticut 06155
bond.claims@thehartford.com
call: **888-266-3488** *or fax:* **860-757-5835**
Agency Code: 21-229752

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- [X] **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [X] **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [X] **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- [ ] **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- [ ] **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- [ ] **Hartford Insurance Company of the Southeast,** a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, ***up to the amount of unlimited:***

Charles J. Nielson, Mary C. Aceves, Charles D. Nielson, Joseph Penichet Nielson, David R. Hoover
of
Miami Lakes, FL

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on March 1, 2016 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.

John Gray, Assistant Secretary

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT
COUNTY OF HARTFORD } ss. Hartford

On this 5th day of April, 2016, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.

Nora M. Stranko
Notary Public
My Commission Expires March 31, 2018

CERTIFICATE

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of May 1, 2018 .

Signed and sealed at the City of Hartford.

Kevin Heckman, Assistant Vice President

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

LUNACON ENGINEERING GROUP, CORP.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	0.864
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	LUNACON ENGINEERING GROUP, CORP.	16890 SOUTH DIXIE HWY MIAMI, FL 33157
Surety:	Nielson, Hoover & Company	8000 Gov Square Blvd. Suite 101 Miami Lakes, FL 33016
Surety's Agent:	Jeffrey M. Hafter	
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, LUNACON ENGINEERING GROUP, CORP., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal) **[NAME OF CONTRACTOR]**

By Patricia Bonilla
, President

_____
, Secretary

Or

JORGE FLOREZ
_____
Witness

ANGELA MARTINEZ
_____
Witness

CONTRACTOR NOTARIZATION

STATE OF FLORIDA

COUNTY OF DADE

The foregoing instrument was acknowledged before me this 3 day of MAY, 2018 by PATRICIA BONILLA of LUNACON CONSTRUCTION GROUP, and, JORGE FLOREZ & ANGELA MARTINEZ of LUNACON CONSTRUCTION GROUP, on behalf of the Contractor. PATRICIA BONILLA, and, JORGE FLOREZ & ANGELA MARTINEZ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires: 5/22/2020

_____
Signature – Notary Public

(SEAL)

Notary Public State of Florida
Robert A Murphy
My Commission FF 987172
Expires 05/22/2020

ROBERT MURPHY
_____
Printed Name of Notary

FF 987172
_____
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY: BERKLEY INSURANCE COMPANY

Olga Iglesias

Gicelle Pajon

By: _____

Its: Charles J. Nielson, Atty.-In-Fact

Date: May 1, 2018

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by Charles J. Nielson of Nielson, Hoover & Company, on behalf of the Surety.

He/she is personally known to me or produced Personally Known) as identification and did/did not first take an oath.

My commission expires:

(SEAL)

Signature – Notary Public

Olga Iglesias

Printed Name of Notary

OLGA L IGLESIAS
NOTARY PUBLIC
STATE OF FLORIDA
NO. GG204944
MY COMMISSION EXPIRES MAY. 21, 2022

Notary's Commission No.

END OF DOCUMENT

No. BI-282a

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: ***Charles J. Nielson; Charles D. Nielson; or Joseph P. Nielson of Nielson & Company, Inc. of Miami Lakes, FL*** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.$100,000,000.00),** to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety Group, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company 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 Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 27th day of April, 2016.

Attest:

(Seal)

By _____
Ira S. Lederman
Senior Vice President & Secretary

Berkley Insurance Company

By _____
Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 27th day of April, 2016, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Senior Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDBAKEN
NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 30, 2019

_____
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 1st day of May, 2018.

(Seal)

_____
Andrew M. Tuma

WARNING – Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

MBR CONSTRUCTION, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	0.864	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	~~0.867~~	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	~~0.894~~	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	~~0.795~~	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	~~0.800~~	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	MBR CONSTRUCTION, INC.	1020 NW 51 STREET FORT LAUDERDALE, FL 33309
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, MBR CONSTRUCTION, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

MBR CONSTRUCTION, INC.
1020 NW 51ST STREET
FORT LAUDERDALE, FL 33309
954-486-8404 • FAX: 954-486-9579
[NAME OF CONTRACTOR]

(Corporate Seal)

By _____
, President

_____
, Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 3 day of May, 2018 by Michael Boss of MBR Construction, Inc, and, _____ of _____, on behalf of the Contractor. Michael Boss, and, _____ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

VILMA RODRIGUEZ
Notary Public - State of Florida
My Comm. Expires Nov 28, 2018
Commission # FF 147090

(SEAL)

_____
Signature - Notary Public

Vilma Rodriguez
Printed Name of Notary

FF 147090
Notary's Commission No.

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

SURETY: **Liberty Mutual Insurance Company**

By: _____

Its: **Michael A. Holmes, Attorney-In-Fact**

Date: **April 27, 2018**

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27th day of April, 2018 by Michael A. Holmes, Attorney-In-Fact of Liberty Mutual Insurance Company, on behalf of the Surety.

He is personally known to me.

My commission expires:

(SEAL)

_____
Signature – Notary Public

_____
Printed Name of Notary

VIVIAN SANTIAGO
Notary Public, State of Florida
My Commission Exp. May 16, 2021
No. GG 104601

_____
Notary's Commission No.

END OF DOCUMENT

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7877479

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Gerald J. Arch; James F. Murphy; Michael A. Holmes

all of the city of FORT LAUDERDALE, state of FL each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 28th day of August, 2017.

The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 28th day of August, 2017, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of April, 2018.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

LMS_12873_022017

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

MRSE LLC dba Roth Southeast

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	0.800	Single Fixed Multiplier (SFM)	0.800
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	MRSE LLC dba Roth Southeast	2260 S.W. 66TH TERR. DAVIE, FL 33317
Surety:		
Surety's Agent:		
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, MRSE LLC, and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

MRSE LLC dba Roth Southeast

By _____
Allen Irvine, Regional Vice President

_____
, Secretary

Or -

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 03 day of May, 2018 by Allen Irvine of MRSE LLC dba Roth Southeast, and, Regional Vice President of MRSE LLC dba Roth Southeast, on behalf of the Contractor.
ALLEN IRVINE, and, _____ are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires: JULY 6, 2020

_____
Signature – Notary Public

(SEAL)

ROBIN L. KUSHNER
Notary Public - State of Florida
Commission # GG 005201
My Comm. Expires Jul 6, 2020
Bonded through National Notary Assn

Robin L. Kushner
Printed Name of Notary

GG 005201
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY: QBE Insurance Corporation

By: _____

Its: **James Frances Murphy, Attorney-In-Fact**

Date: April 27, 2018

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27th day of April, 2018 by James Frances Murphy, Attorney-In-Fact of QBE Insurance Corporation, on behalf of the Surety.

He is personally known to me.

My commission expires: May 16, 2021

(SEAL)

_____
Signature – Notary Public

Vivian Santiago
Printed Name of Notary

VIVIAN SANTIAGO
Notary Public, State of Florida
My Commission Exp. May 16, 2021
No. GG 104601

_____
Notary's Commission No.

END OF DOCUMENT

QBE

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE BLUE BORDER

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS, that QBE Insurance Corporation (the "Company"), a corporation duly organized and existing under the laws of the State of Pennsylvania, having its principal office at 55 Water Street 20th Floor, New York, NY 10041, has made, constituted and appointed, and does by these presents make, constitute and appoint **Michael A. Holmes, Gerald Julius Arch, and James Frances Murphy of Brown & Brown of Florida, Inc. of Fort Lauderdale, FL** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of financial guaranty insurance, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of New York, without giving effect to the principles of conflict of laws. This Power of Attorney is granted pursuant to the following resolutions, which were duly and validly adopted at a meeting of the Board of Directors of the Company with effect from June 30, 2014:

RESOLVED, that the Chief Executive Officer, any President, any Executive Vice President, any Senior Vice President, any Vice President, the Corporate Secretary or any Assistant Corporate Secretary is authorized to appoint one or more Attorneys-in-Fact and agents to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time;

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking will be valid and binding upon the Company when (a) signed by any of the aforesaid authorized officers; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and agents pursuant to the power prescribed in his/her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and

FURTHER RESOLVED, that the signature of any authorized officer and the seal of the Company may be drawn on or affixed by facsimile or electronically transmitted by email to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company, and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile or electronically reproduced signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this December 15, 2017.

Attest:

(Seal)

By: Brett Halsey
Brett Halsey
Senior Vice President

QBE INSURANCE CORPORATION

By: Matt
Matt Curran
Senior Vice President

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

On this December 15, 2017, before me personally appeared Brett Halsey and Matt Curran, both to me known to be Senior Vice Presidents of QBE Insurance Corporation, and that each, as such, being authorized to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporation by each as a duly authorized officer.

Harpreet Kaur Mann
Notary Public, State of New York
No. 02MA6335099
Qualified in New York County
Commission Expires December 28, 2019

By: Harpreet Mann
Harpreet Kaur Mann, Notary Public

CERTIFICATE

I, Jose Ramon Gonzalez, Jr., the undersigned, Corporate Secretary of QBE Insurance Corporation do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth herein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 27th day of April 2018.

(Seal)

By: J. R. G.
Jose Ramon Gonzalez, Jr., Corporate Secretary

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

THERMAL CONCEPTS, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve

Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and

incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract

Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	0.800	Single Fixed Multiplier (SFM)	0.800
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS

Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall

include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances

relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional

payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require

all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351

Contractor:	THERMAL CONCEPTS, INC.	2201 COLLEGE AVE DAVIE, FL 33317
Surety:	QBE Insurance Corporation	55 Water Street 20th Floor New York, NY 10041
Surety's Agent:	Matt Curran	
Project Consultant:	To be assigned per project.	

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, THERMAL CONCEPTS, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

Thermal Concepts, Inc.

By _____
Lawrence Maurer, President

_____, Secretary

_____
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 4th day of May, 2018 By Lawrence Maurer of Thermal Concepts, Inc., and, _____ of _____, on behalf of the Contractor.

_____, and, _____ are personally known to me or produced himself as identification and did/did not first take an oath.

My commission expires:

10-08-2021

(SEAL)

Notary Public State of Florida
Carolyn Marie Hammonds
My Commission GG 149307
Expires 10/08/2021

_____
Signature – Notary Public

Carolyn Hammonds
Printed Name of Notary

GG 149307
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY: QBE Insurance Corporation

Jim Hall

By: _____

Its: **James Frances Murphy, Attorney-In-Fact**

Date: **April 27, 2018**

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27th day of April, 2018 by James Frances Murphy, Attorney-In-Fact of QBE Insurance Corporation, on behalf of the Surety.

He is personally known to me.

My commission expires: May 16, 2021

(SEAL)

_____
Signature – Notary Public

Vivian Santiago
Printed Name of Notary

VIVIAN SANTIAGO
Notary Public, State of Florida
My Commission Exp. May 16, 2021
No. GG 104601

_____
Notary's Commission No.

END OF DOCUMENT

QBE

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE BLUE BORDER

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS, that QBE Insurance Corporation (the "Company"), a corporation duly organized and existing under the laws of the State of Pennsylvania, having its principal office at 55 Water Street 20th Floor, New York, NY 10041, has made, constituted and appointed, and does by these presents make, constitute and appoint **Michael A. Holmes, Gerald Julius Arch, and James Frances Murphy of Brown & Brown of Florida, Inc. of Fort Lauderdale, FL** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of financial guaranty insurance, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of New York, without giving effect to the principles of conflict of laws. This Power of Attorney is granted pursuant to the following resolutions, which were duly and validly adopted at a meeting of the Board of Directors of the Company with effect from June 30, 2014:

RESOLVED, that the Chief Executive Officer, any President, any Executive Vice President, any Senior Vice President, any Vice President, the Corporate Secretary or any Assistant Corporate Secretary is authorized to appoint one or more Attorneys-in-Fact and agents to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time;

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking will be valid and binding upon the Company when (a) signed by any of the aforesaid authorized officers; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and agents pursuant to the power prescribed in his/her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and

FURTHER RESOLVED, that the signature of any authorized officer and the seal of the Company may be drawn on or affixed by facsimile or electronically transmitted by email to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company, and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile or electronically reproduced signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this December 15, 2017.

Attest:

(Seal)

By: Brett Halsey
Brett Halsey
Senior Vice President

QBE INSURANCE CORPORATION

By: Matt
Matt Curran
Senior Vice President

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

On this December 15, 2017, before me personally appeared Brett Halsey and Matt Curran, both to me known to be Senior Vice Presidents of QBE Insurance Corporation, and that each, as such, being authorized to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporation by each as a duly authorized officer.

Harpreet Kaur Mann
Notary Public, State of New York
No. 02MA6335099
Qualified in New York County
Commission Expires December 28, 2019

By: Harpreet K Mann
Harpreet Kaur Mann, Notary Public

CERTIFICATE

I, Jose Ramon Gonzalez, Jr., the undersigned, Corporate Secretary of QBE Insurance Corporation do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth herein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 27th day of April 2018.

(Seal)

By: J. R. A. G.
Jose Ramon Gonzalez, Jr., Corporate Secretary

The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351 (754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 8th day of May, 2018 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "**Owner**" and

UNIVERSAL ELECTRIC OF FLORIDA, INC.

(Hereinafter referred to as "**Contractor**").

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

Bid No.:	18-171F
Location No.:	Districtwide
Project Title:	Construction Services Emergency Projects (CSEP)

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner may need Construction Services in response to a Declared Emergency during the term of this Agreement, which may include labor, materials, and/ or services from the Contractor on various projects; and

WHEREAS, Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement; and

WHEREAS, The terms and conditions of this Agreement shall govern each of the individual Projects for which the Contractor is properly authorized to perform; and

WHEREAS, the Contractor 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 agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 **Definitions:**

1.02 **The Chief Facilities Officer and Construction Officer** -An employee of The School Board of Broward County, Florida, who has the authority and responsibility for

oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Chief.

1.03 **Owner** -The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

1.04 **Owner's Representatives** -The Chief or designee.

1.05 **Contractors** -Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.

1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.

1.07 **Project Manager** -An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, Ill, or a combination of Project Managers based on the complexity and size of the Project.

1.08 **Project** -The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.

1.09 **Phase** -A designated subdivision of the Work, usually with its own requirements for Substantial· and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.

1.10 **Punch List** -A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/ or inconsistent with the Contract Documents.

1.11 **Subcontractor** -A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the

Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.

1.12 **Fixed Limit of Construction (FLCC)** -Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.

1.13 **Submittals** -Are prepared by the Contractor or those working on its behalf (subcontractors, material suppliers, and others) to illustrate how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.

1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.

1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.

1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.

1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.

1.19 **Building Code Inspector and Plans Examiners (BCI) -Employees of The School Board of Broward County, Florida, and others designated by the Chief Building**

Official, who are certified by Florida Statutes 468, 633 · and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance. A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.

1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

1.21 **Written Notice** -Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission shall not be considered as a written notice.

1.22 **Notice to Proceed (NTP)** - A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.

1.23 **Construction Manager** -An employee of the Owner referred to hereinafter as the "CM" and who is the direct Supervisor of the Project Manager.

1.24 **Estimating Order** -Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.

1.25 **Project Cost Sheet** -A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.

1.26 **Estimating Recap Form** -A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.

1.27 **RS Means Facilities Construction Cost Data** -The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that

form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.

1.28 **RS Means CostWorks** -Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4

1.29 **Contract Documents** -Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

1.30 **Declaration of an Emergency** -An Emergency is declared by the President of the United States, or, the Governor of the State of Florida, and/ or the Superintendent of Schools for Broward County Schools. An emergency may be defined in the following manner: "An emergency exists where immediate action must be taken, essential to the health, safety or welfare of the community." Less strictly, it is simply a dangerous situation that requires an immediate response.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES.

2.01 Representations:

2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/ or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only Subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.

2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications. including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3. THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 **Project Management**

3.03.01 The Chief or designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner's Representative.

ARTICLE 4. BASIS OF COMPENSATION.

4.01 The Single Fixed Multiplier, as agreed upon, is found in Document 00410, Bid Form, submitted within Contractor's Bid and is herewith incorporated into this Agreement.

BASE BID: TABLE A

WORK CATEGORY	ITEM NO.1		ITEM NO.2	
General Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Roofing Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$10,000,000	Contract Amount	$50,000,000
	Renewable Amount	$2,000,000	Renewable Amount	$10,000,000
Electrical Contractor	Single Fixed Multiplier (SFM)	0.894	Single Fixed Multiplier (SFM)	0.894
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000
Fire Alarm Contractor	Single Fixed Multiplier (SFM)	0.795	Single Fixed Multiplier (SFM)	0.795
	Contract Amount	$2,000,000	Contract Amount	$4,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$1,000,000
Mechanical Contractor	Single Fixed Multiplier (SFM)	_____	Single Fixed Multiplier (SFM)	_____
	Contract Amount	$4,000,000	Contract Amount	$8,000,000
	Renewable Amount	$1,000,000	Renewable Amount	$2,000,000

4.01.01 The Contract amount and Time for Completion for each project shall be identified in the Notice to Proceed. The Contract amount for each project shall include the RS Means Costs for Labor, Materials, Overhead and Profit for the installing contractor. For Subcontracted Work the Contractor shall be entitled to Ten Percent (10%) for Overhead and Profit in addition to the subcontracted amount and direct costs in accordance with RS Means Cost Data for management, supervision, and general requirements. The foregoing costs shall be subject to the Single Fixed Multiplier. All Subcontracted Work shall be represented in the form of the RS Means Cost Data and shall be subject to the Single Fixed Multiplier.

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's Representative. **(Reimbursements are not subject to Single Fixed Multiplier).**

4.03 **Estimates:**

4.03.01 Estimates shall be in the form of the Estimating Recap Form and Project Cost Sheet. Estimates shall include and be based upon all unit items of Work included in the Contract Documents and detailed in the Scope of Work. Estimates will be in a form deemed suitable by the Owner's Representative, as indicated in the Estimating Order. Deviations from or changes to the unit prices or items of Work from RS Means Cost Data shall be cause for rejection of the estimate.

4.04 The Schedule of Values shall be comprised of the following:

4.04.01 The Estimating Recap Form and Project Cost Sheet shall be based on the current RS Means Facilities Construction Cost Data, or, RS Means CostWorks software in effect at the date of the Estimating Recap Form and Project Cost Sheet submission as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida 33312.

4.04.02 If a labor rate needs to be established for a task not found in RS Means Facilities Construction Cost Data, or, RS Means CostWorks software, use the labor rates published in the current RS Means Facilities Construction Cost Data, Crew Tables, to estimate that specific task.

4.05 If a discrepancy exists between the unit price costs and the assembly costs, the lowest cost shall govern.

4.06 The Owner's Representative reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.

b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.

c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

d. Tools and equipment with an individual cost of $500 or less.

d. Cell phone charges in excess of$100 per authorized employee as approved by the Owner.

e. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.

f. Overtime charges not previously authorized in writing by the Owner.

g. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 – ESTIMATING ORDER

5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities Officer or Designee(s).

5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.

5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 – PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**

6.02 The date for commencing work (Start Date) shall not be more than ten (5) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.

6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7 – PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.

7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.

7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables

made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 – INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9 – INSURANCE

9.01 Supplemental Insurance Requirements:

9.01.01 Refer to General Conditions of the Contract, Document 00700, Article 42 Contractor's Insurance for specific requirements.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars ($200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars ($200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F .S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

ARTICLE 10 – GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

10.02 **Term of Agreement:**

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between The School Board of Broward County, Florida and the Contractor, upon final approval of The School Board of Broward County, Florida, be extended for one additional one-year period and/or the amounts designated for extension in Article 4.01, Table A, herein. The Owner, through its Office of Facilities and Construction, shall, if considering an extension, request a letter of intent to extend from the Contractor, prior to the end of the current Agreement term. The Contractor will be notified when the recommendation has been acted upon by the School Board. The **Single Fixed Multiplier** agreed to herein shall apply for the term of this Agreement and any extension.

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 **Time for Performance:**

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Chief or designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Notice to Proceed. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 **Time Extensions:**

10.04.01 A reasonable extension of time for completion of various aspects may be granted by the Owner's Representative in writing should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no Damage for Delay provisions.

10.05 **Termination of Agreement:**

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Office of Facilities and Construction that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provided the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in

terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 **Termination of Convenience:**

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Costs. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 **Contractor's Accounting Records and Right to Audit Provisions:**

10.07.01 Contractor's "records", as referred to in this contract, shall include, but not be limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any .bearing or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or its payees. Contractor shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee.

Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested m an expeditious manner any and all such information, materials and data.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/ or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

10.07.03 0wner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 0ne (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be

maintained by the Contractor with weekly review by the Project Manager. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.01 **Attachments and References:**

10.01.01 This Construction Services Emergency Projects Agreement, along with the This Construction Services Emergency Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, and the contractor's Bid. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

10.11 **Extent of Agreement:**

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 **Strict Performance:**

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective

or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11 – PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 – NOTICES

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

Party:		**Address:**
Owner:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Director Procurement & Warehousing Services The School Board of Broward County, Florida	Mary C. Coker Procurement & Warehousing Services Department 7720 W. Oakland Park Blvd. Suite 323 Sunrise, Florida 33351
Contractor:	UNIVERSAL ELECTRIC OF FLORIDA, INC.	6784 NW. 17TH AVENUE FORT LAUDERDALE, FL 33309

Surety:

Surety's Agent:

Project Consultant: To be assigned per project.

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

ARTICLE 13 – AUTHORITY PROVISION

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

ARTICLE 14 – NON-DISCRIMINATION PROVISION

14.01 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. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 – CAPTION PROVISION

15.01 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 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor 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 17 – EXCESS FUNDS PROVISION

17.01 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.

IN WITNESS THEREOF, the said Contractor, UNIVERSAL ELECTRIC OF FLORIDA, INC., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

(Corporate Seal)

ATTEST:

Robert W. Runcie, Superintendent of Schools

OWNER

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Nora Rupert, Chair

Approved as to form and legal content

Office of the General Counsel

CONTRACTOR

(Corporate Seal)

[NAME OF CONTRACTOR]

By _____, President

_____, Secretary

Or -

R. A. Daddi
Witness

_____
Witness

CONTRACTOR NOTARIZATION

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 4 day of May, 2018 by Phillip L Wyman Sr of Universal Electric of Florida, and, Braelin Godfrey of Universal Electric of Fla, on behalf of the Contractor. Phillip L Wyman Sr., and, Braelin Godfrey are personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires:

_____
Signature – Notary Public

(SEAL)

_____
Printed Name of Notary

DENISE C KELLERMAN
Notary Public - State of Florida
Commission # GG 112095
My Comm., Expires Jun 6, 2021
Bonded through National Notary Assn.

_____
Notary's Commission No.

SURETY ACKNOWLEDGMENT

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

SURETY: Great American Insurance Company

By: **Robert H. Benson**

Its: **Attorney In Fact**

Date: **May 1, 2018**

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 1st day of May, 2018 by Robert H. Benson of Miami Shores, FL, on behalf of the Surety.

He/she is personally known to me or produced personally known as identification and did/did not first take an oath.

My commission expires:

(SEAL)

Signature - Notary Public

Printed Name of Notary

ADRIENNE J. LEITER
Commission # GG 193382
Expires May 4, 2022
Bonded Thru Troy Fain Insurance 800-385-7019

Notary's Commission No.

END OF DOCUMENT

GREAT AMERICAN INSURANCE COMPANY

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than ONE

No. **0** 17580

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; for all obligees including any and all consents required by the Department of Transportation, State of Florida, incident to the release of retained percentages and/or final estimates; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
ROBERT H. BENSON	MIAMI SHORES, FLORIDA	$100,000,000

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 1ST day of JUNE , 2016 .

Attest

GREAT AMERICAN INSURANCE COMPANY

Assistant Secretary

Divisional Senior Vice President

DAVID C. KITCHIN (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 1ST day of JUNE , 2016 , before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

Susan A. Kohorst
Notary Public, State of Ohio
My Commission Expires 05-18-2020

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 1ST day of May , 2018 .

Assistant Secretary