

CONSTRUCTION SERVICES AGREEMENT

BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
CONSTRUCTION MANAGER
FOR
CONSTRUCTION MANAGEMENT AT RISK SERVICES

PROJECT NO: P.002141

PROJECT NAME AND LOCATION: Lyons Creek Middle School
SMART Program Renovations
4333 Sol Press Blvd.
Location No.: 3101
Coconut Creek, FL 33073

CONSTRUCTION MANAGER: Messam Construction d/b/a Asset Builders, LLC
State Corp: Florida
3600 Red Road – Suite 3030
Miramar, FL 33025
Phone: 877-963-7726
Fax: 877-802-0674

PROJECT CONSULTANT: D.L. Fields Consultants, LLC
1125 NE 125th Street – Suite 210
Miami, FL 33161
Phone: 305-582-0091

FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made and entered into this 19th day May in the year 2020 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

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

Messam Construction d/b/a Asset Builders, LLC
3600 Red Road – Suite 3030
Miramar, FL 33025
Phone: 877-963-7726
Fax: 877-802-0674
Federal Employer Identification Number 14-1867540
State of Incorporation: Florida

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

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

SMART Program Renovations
P.002141
at
Lyons Creek Middle School

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

D.L. Fields Consultants, LLC

(hereinafter referred to as Project Consultant).

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

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

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ARTICLE 1
THE PROJECT CONSTRUCTION TEAM AND ENTIRE AGREEMENT

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

The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.

No changes, amendments or modifications of any of the terms or conditions of the Agreement shall be valid unless reduced to a written instrument and signed by both parties.

ARTICLE 2
THE WORK

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

ARTICLE 3
CONSTRUCTION MANAGER'S SERVICES

3.1 The services of the Construction Manager shall include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The Construction Manager shall also comply with all requirements of the Florida Building Code (FBC), Florida Fire Prevention Code (FFPC), State Requirements for Educational Facilities (SREF), the Florida K-20 School Code, and any other applicable codes, regulations and procedures that are in effect as of the date the building permit(s) is issued.

.1 Notwithstanding any other provisions of this Agreement to the contrary, any substantially affected person may appeal any building code dispute or interpretation of the Chief Building Official of the School Board of Broward County, Florida to the Florida Building Commission as set forth in Florida Statute 1013.37(2005) and the Florida Building Code, as amended.

3.2 **GENERAL (Part of Preconstruction Phase)**

.1 The Construction Manager shall review project requirements, educational specifications, on and off-site development, survey requirements, preliminary budget, and make value engineering and constructability recommendations for revisions to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.

.2 The Construction Manager shall, subject to Owner's approval and compliance with existing Owner completion schedule, establish a preliminary master project schedule identifying all phases, Critical Path elements, responsibilities of the Owner, Project Consultant, outside agencies, third parties and any other impacts which would affect project schedule and progress and update them monthly throughout the duration of the contract.

.3 Where the project includes renovation or expansion of an existing Facility, the Construction Manager will assist the Construction Team in preparing an analysis package outlining the condition of the existing Facility, existing structure, existing finishes, and existing equipment, code deficiencies, energy use, and life expectancy of other building systems by providing constructability, value engineering and cost estimates recommendations. The package should contain the Construction Managers recommendations, cost estimates and preliminary schedules. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.

.4 **e-Builder.** The Construction Manager shall be required to use Owner's Project Management software, e-Builder. One (1) license will be distributed to Construction Manager, at cost to Owner, which will allow access into e-Builder for one or multiple projects as awarded by Owner. Usage of this license will be provided throughout the duration of the project(s). Based on availability, additional licenses may be provided as needed.

.5 The Construction Manager shall provide project delivery options for the design, bid, and bid packaging of the project for efficient scheduling, cost control and financial resource management. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.

- .6 The Construction Manager shall utilize information and reporting systems to provide the Owner with monthly reports containing accurate and current cost controls, work status, including but not limited to Work narrative, Work completed/anticipated, short term and long term schedules estimated expenditures, and project accounting systems of the project at all times. Such information shall be provided to the Owner and Project Consultant in the form of a written report, prior to final payment for this phase.
- .7 The Construction Manager shall prepare a report with the Project Team's participation which shall describe, as a minimum, the Work plan, job responsibilities, and written procedures for reports, meetings, inspections, changes to the project, building systems and delivery analysis and other relevant matters. Such information shall be provided to the Owner and Project Consultant prior to final payment for this phase.
- .8 The Construction Manager shall provide market analysis and motivation for subcontractor interest and recommendations for minority business participation. This shall include analysis of the Construction Manager's historical data for subcontracting, communication with contractor and trade organizations requesting participation, review of the Owner's M/WBE data, advertising, outreach programs, mailings to all prospective bidders identified by these actions, and reporting of all of the foregoing to the Owner, Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .9 The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit B of the General Conditions. All required reports and documentation shall be submitted and approved by the Owner as pre-requisite to progress payments to the Construction Manager by the Owner during this phase.

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

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

Owner and Project Consultant at S.D., (Schematic Design), D.D (Design Development) C.D. (50% and 100% Construction Documents) phases of the project. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for each phase.

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

issuance for 100% completion documents) the Construction Manager and others, as applicable, having jurisdiction;

1. Foundation / Structural / LCCA / Site and Off-Site Package – 100% Documents
 - (a) A separate 50% completion progress set (for information only) of Building Finish Package drawings shall also be submitted which shall show all of the major characteristics of the project utilities and service, detailed site and floor plans, elevations, sections, schedules, etc.
 - (b) Construction may begin after approvals and building permit is obtained for above package.
2. Building Finish Package – 100% Documents
3. As mutually agreed by the parties in writing.

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

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

the GMP for the Owners review and approval in accordance with Article 6 of this Agreement.

- .8 At the time of the submission of the documents referenced in Article 3.4.5, the Construction Manager is required to submit, in writing, a buyout reconciliation of all subcontracts that have been awarded as a product of the initial bid opening date. The result of this reconciliation is to be presented in association with a modified schedule of values reflecting the net buyout adjustment in the Owner Savings / Buyout line on the schedule of values. Any un-awarded values remaining in the GMP shall continue to be carried at their estimated amounts until a subcontract is awarded and adjusted in accordance with Article 6.1 of this agreement.
- .9 Should the Construction Manager desire to submit a bid to self-perform any of the portions of the Work, this intention must be clearly conveyed to the Owner prior to the receipt of any other bids for the same scope of work. All bids to be received for this portion of the Work must be submitted directly to the Owner who will then open and evaluate at bid opening. When three (3) or more bids are received for that portion of work, and the Construction Manager's bid is the lowest and approved by the Owner, the Construction Manager's bid shall be incorporated in the GMP as a lump sum. In the event where fewer than three (3) bids are received for that portion of work which the Construction Manager intends to self-perform, the Owner shall reimburse the Construction Manager for the actual cost of work performed, subject to the supporting documentation provisions as outlined in this Agreement.

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

- .1 The Construction Manager shall fully comply with the provision of the Owner's Project Manual, including but not limited to Division 0 and 1, and the attached General Conditions. In the event of a conflict between this Agreement and such documents the agreement shall control.
- .2 The Construction Manager shall provide the minimum staffing level as set forth in Exhibit B of the General Conditions for this project:
- .3 The Construction Manager shall maintain and prepare monthly updates for all project schedules, including Critical Path elements, provide written progress reports, describe problems and corrective action plan(s) and conduct briefings as required by the Owner. Such information shall be provided to the Owner and Project Consultant in the form of a written report with progress payments requests.
- .4 Subject to Article 3.4.9, the Construction Manager may self-perform certain construction work when it benefits the Owner, results in cost and time savings, and is pre-approved by the Owner in writing.
- .5 The Construction Manager shall coordinate project close-out, operation, and transition to occupancy.
- .6 The Construction Manager shall coordinate with the Project Consultant to provide complete project records including project manual, and electronic Computer Assisted Drafting (CAD) drawings corrected to show all construction changes, additions, and deletions. (Construction Manager shall note all changes on the as-builts for the Project Consultant to reflect on the drawings and CAD disc.)

- .7 The Construction Manager shall coordinate with the Owner's staff to prepare the Certificate of Final Inspection.
- .8 The Construction Manager shall obtain and review all warranties, operations and maintenance manuals and other such documents, for completeness, have them corrected if necessary and submit them to the Owner.
- .9 The Construction Manager shall complete all punch list items generated by the Building Code Inspector (BCI), the Owner, the Project Consultant and any others having jurisdiction over the project, during its inspections.
- .10 If at any time during the course of the Project, Owner determines that the performance of any Subcontractor, member of the Project Team or other member of Construction Manager's staff working on the Project is unsatisfactory, Owner can require Construction Manager to remove such person or entity from the Project immediately and replace such person or entity. Replacements of members of the Project Team or Construction Manager's staff shall be at no cost or penalty to Owner for delays or inefficiencies the change may cause. Construction Manager shall be entitled to request a Change Order for costs and time associated with the replacement of Subcontractors required by Owner.
- .11 Construction Manager shall exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its Subcontractors on the Project shall work in harmony, and be compatible, with all other labor being used on the Project and representatives of Owner. Construction Manager shall include this provision in all contracts with its Subcontractors, and all Subcontractors shall include such provision in their contracts with sub-subcontractors; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work guaranteed by Article I, Section 6 of the Florida Constitution.
- .12 No Contractual Relationship. Nothing contained in this Agreement shall create a contractual relationship between Owner and any other person or entity other than Construction Manager.
- .13 Good Order. The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other persons carrying out Construction Manager's obligations under the Contract Documents. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- .14 Liability. Construction Manager shall be responsible to Owner for acts and omissions of Construction Manager's employees, contractors and their subcontractors, agents and employees, and other persons, including, design professionals, performing any portion of Construction Manager's obligations under the Contract Documents.

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

- .1 The Construction Manager shall provide a minimum one (1) year warranty and shall coordinate and supervise the completion of warranty Work during the warranty period. Construction Manager shall participate with the Owner in conducting of warranty inspections held on the sixth (6th) and eleventh (11th) months after occupancy. Construction Manager shall

deliver all as-built drawings, warranties and guaranties to the Owner.

- .2 Where any Work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Owner Occupancy of the Project or a designated portion thereof or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications or by Florida Law. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents.
- .3 The Construction Manager shall provide a Warranty Summary Report at the end of the 6-month warranty period and 11-month warranty period. This report shall provide at a minimum;
 - (1) Description of each warranty item during the period.
 - (2) Date item reported to Construction Manager.
 - (3) Date item corrected. If more than one trip required, document each.
 - (4) Description of action taken to cure warranty item.
 - (5) Obtain signature of school principal or designee acknowledging warranty items have been completed.
 - (6) Other pertinent information, if applicable.
- .4 Refusal of the Construction Manager to provide any work required in the Warranty Phase of the project shall be basis for non-payment of any and all Warranty Phase Fee unpaid at the time of refusal.

ARTICLE 4

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

ARTICLE 5

LIQUIDATED DAMAGES

5.1 LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION

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

Five hundred dollars, \$500, per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth in the contract documents for Substantial Completion of each phase, if phased, or the project, if not phased.

- .2 Owner and Construction Manager acknowledge that any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner as estimated at the time of executing this Contract. If the Owner reasonably believes in its discretion that Substantial Completion will be delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when in the Owner's discretion the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.
- .3 Partial use or occupancy of the Work may not result in the Work being deemed substantially completed, and such partial use or occupancy may not be evidence of Substantial Completion.

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

5.2 LIQUIDATED DAMAGES FOR FINAL COMPLETION:

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

Five hundred dollars, \$500, per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for final completion of the Work.

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

- .3 All product warranties, operating manuals, instruction manuals and other documents customarily required of the Construction Manager or reasonably required by Owner, including but not limited to those required elsewhere in the Contract Documents, as part of its Project Closeout procedures;

ARTICLE 6 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 6.1 The Construction Manager shall submit a written Guaranteed Maximum Price (GMP) for Construction to the Owner when the Construction Documents are 100% complete. Work shall not commence prior to the issuance of a Building Permit by the Chief Building Official. This indicates that all mandatory requirements have been met (defined as Building Department code requirements.) Further, all agreed upon comments from all design phases are required to be incorporated into the drawings at this stage. If design review “approval” is withheld, the documents must be resubmitted. The GMP shall guarantee the maximum price for the construction cost of the project or designated part thereof, for phased projects, and shall be approved by the Owner. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 27 of the General Conditions. However, the actual price paid for the Work by the Owner shall be the actual cost of all Work subcontracts, supply contracts, direct labor costs, **direct supervision costs**, and direct job costs as defined under Article 26 of the General Conditions, plus the Construction Manager’s fee or the GMP, **whichever is less when the Work is complete. OWNER SHALL NOT BE LIABLE FOR NOR SHALL IT PAY CONSTRUCTION MANAGER ANY SUMS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE. CONSTRUCTION MANAGER AGREES THAT ANY AND ALL SAVINGS BELONG AND REVERT BACK TO THE OWNER.**
 - .1 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Construction Manager’s cost of Work. In addition to the cost of Work, the GMP will include an agreed upon sum as the construction contingency which is included for the purpose of accounting for unforeseen increases or decreases in the construction cost at the time bids are received and approved by the Construction Manager and Owner and/or unforeseen circumstances. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. The use of the contingency shall be subject to School Board approval as noted in General Conditions Article 1, Paragraph 1.1.12, if the amount requested exceeds Fifty thousand dollars (\$50,000.00) prior to disbursement to Construction Manager. The use of the contingency where the request does not exceed Fifty thousand dollars (\$50,000.00) shall be subject to the unanimous approval of the Chief Facilities Officer, Director of Construction, Project Manager, and Project Consultant, prior to disbursement to Construction Manager. In the event that there is a disagreement amongst the Construction Manager and the aforementioned staff, the request for use of the contingency shall be determined by the Owner. Documentation for use of the Contingency shall be determined by the Owner, included in the Project Manual and displayed in the monthly applications for payment. The Project Consultant and Owner

shall verify actual costs. All Contingency Use Directives (CUDs) arising from the same cause and conditions shall be combined into one (1) CUD whenever possible.

- .2 During the Construction Phase, subsequent to initial buyout procedures conducted in accordance with Article 3.4 of this agreement, an adjustment shall be made by the Construction Manager every month to increase or decrease the Buyout / Owner's Savings line of the schedule of values for subcontracts awarded during the period. This adjustment is to be supported by a reconciliation including any and all supporting documentation required by the Owner to verify its accuracy.
 - .3 All uses of the authorized contingency shall be authorized by Contingency Use Directive approved by the Owner before the contingency use is implemented. Any use of Buyout / Owner Savings shall be authorized by Change Order, approved by the School Board and subject to the provisions of this agreement for Change Orders.
- 6.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.
- 6.3 The Construction Manager shall submit the GMP Addendum on the Owner's approved form (Agreement Exhibit A) for approval by The School Board of Broward County, Florida.
- 6.4 **IF THE GMP PROPOSAL IS UNACCEPTABLE TO THE OWNER, OWNER MAY TERMINATE THE CONSTRUCTION MANAGER AS SET FORTH IN ARTICLE 36 OF THE GENERAL CONDITIONS.**

ARTICLE 7 CONSTRUCTION MANAGER'S FEES

- 7.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services, fees as set forth in Agreement Exhibit B. These fees may later be amended through the incorporation of the GMP.
- .1 Preconstruction Phase - In the case where preconstruction phase fees are agreed upon and the Construction Manager's GMP is not accepted by the Owner and the Agreement is terminated, the Construction Manager shall be entitled to receive only that portion of the preconstruction phase fees representing all Work performed to date relating to the project. The Construction Manager may request payment for that part of the Contract Price allocable to Contract requirements properly provided during the preconstruction phase.
 - .2 Construction Managers fees – will be applied as a percentage of Cost of Work.
 - .3 Costs for Project General Conditions shall be set as a Lump Sum Cost and shall be included in the GMP. See Article 8 for Application for Payment procedures. Prior to incorporation into the approved GMP, the Construction Manager shall prepare a detailed schedule of General Conditions items and appropriate supporting documentation for review and approval by the Owner and Owner's Representative. The General Conditions listing and supporting

documentation shall be provided in a format acceptable to Owner.

- .4 Fee for Change Orders – In the event that the Owner approves an additive change in the work, the Construction Manager shall receive from the Owner Overhead and Profit, at the percentage of the cost of the work of the change order agreed upon in the GMP. This amount shall be the Construction Manager’s exclusive remedy for such changes in the Work. In the event that the Owner approves a deductive change order for a reduction in the scope of work, the Construction Manager shall deduct Overhead and Profit at the percentage of the cost of work deducted in the change order.

7.2. Construction Manager’s Deliverables

.1 General

- .1 Summary Report / Recommendations (Agreement 3.2.1)
- .2 Preliminary Master Project Schedule and monthly updates (Agreement 3.2.2)
- .3 Existing Facility Analysis package, recommendations, Cost Estimates (Agreement 3.2.3)
- .4 Project Delivery options / packaging recommendations report (Agreement, 3.2.5)
- .5 Work Status Monthly Report (Agreement 3.2.6)
- .6 Project Manual (Agreement 3.2.7)
- .7 Market Analysis/sub-contractor report (Agreement, 3.2.8)

.2 Design Phase

- .1 Monthly Summary of project meetings (Agreement 3.3.1)
- .2 Document Reviews / report at each phase (Agreement 3.3.2, 3.3.5, 3.3.6).
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
- .3 Preliminary Master Project Schedule Updates (Agreement 3.3.7)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
- .4 Cost Estimates (Agreement, 3.3.4)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
- .5 Guaranteed Maximum Price (GMP) Manual (Agreement 3.3.12)

.3 Bidding and Award Phase

- .1 Proposed Subcontractor list with MWBE participation (Agreement 3.4.2).
- .2 Bid Packages List, Tabulation Sheet, Bid Support (Agreement 3.4.3)
- .3 Pre-bid conference attendance list and summary report (Agreement, 3.4.4)
- .4 Recommendations for award (Agreement, 3.4.5)

- .5 Schedule of Values (Agreement 3.4.7)
 - .6 Buyout Reconciliation (Agreement 3.4.7)
 - .7 Executed subcontract agreements (Agreement 3.4.5)
-
- .4 Construction Phase
 - .1 Monthly Schedule updates and reports (Agreement, 3.5.3)
 - .2 Summary of all meetings (Agreement 3.3.1)
 - .3 Preparation and submission of all close-out submittals (Agreement, 3.5.8)
 - .4 Written verification of punchlist items completion, including BCI items (Agreement, 3.5.9)
 - .5 Schedule of Values (Agreement 8.1).
 - .6 Buyout Reconciliation Updates (Agreement 6.1)
 - .7 Allowance usage log (Agreement 8.5)
 - .8 Contingency usage log (Agreement 8.5)
 - .5 Warranty Phase
 - .1 Warranty Summary Report at end of 6 months (50% of Warranty Phase fee) and 11 months (Balance of Warranty Phase Fee) Warranty Phase (Agreement 3.6.3)
 - .6 Other Deliverables
 - .1 Insurance Policies (Agreement 8.1.7)
 - .2 Payment Applications (Agreement 8.2 through 8.14)
 - .5 Agreement Execution and Contract Bonds (Agreement 9.1)
 - .6 Closeout documents as set forth in the Contract Documents.
 - .7 Final Payment
 - .1 Payment affidavits, release of lien and other requirements (Agreement 8.15)

**ARTICLE 8
PAYMENTS TO THE CONSTRUCTION MANAGER**

- 8.1 Schedule of Values:
 - .1 Before the first Application for Payment for the Work, the Construction Manager shall submit to Owner a schedule of values allocated to various portions of the Work. Construction Manager's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner may, at its option, require. Construction Manager shall not front-end load its Schedule of Values and shall not imbalance its Schedule of Values. The allocated value of each item in the Schedule of Values shall only include its total cost. The Schedule of Values shall be used only as a basis for Construction Manager's Applications for Payment and shall only be so used after it has been approved in writing by Owner.

- .2 The Construction Manager shall maintain and update the Schedule of Values originally provided to the Owner with the GMP Addendum, as modified for approved Buyout Savings.
- .3 The Construction Manager's Schedule of Values apportions the GMP among the different elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Contractor's monthly Application for Payment.
- .4 The Schedule of Values shall be presented with such detail, and supported with whatever information the Owner reasonably requests as addressed in Article 8.5 of this Agreement.
- .5 The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof.
- .6 The Construction Manager shall supply a Schedule of Values as reflected in his CPM schedule to the OWNER. The Schedule of Values shall be updated monthly, only to reflect all subcontracts, buyouts, approved change orders and change directives.
- .7 No payments shall be made to the Construction Manager prior to the receipt of all insurance policies that are required by this agreement and the work being performed.
- .8 In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any Application for Payment that (i) Construction Manager have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement, and (ii) Construction Manager shall have furnished to Owner, if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of bond, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Owner, at Owner's discretion, may permit Construction Manager to furnish a bond satisfactory to Owner in lieu of such release or waiver indemnifying Owner against such claim. If such claim remains unsatisfied after payments are made, Construction Manager shall refund to Owner all money that Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.
- .9 Withholding Payment. Owner may appropriately adjust Construction Manager's Applications for Payment if Owner reasonably believes that any portion of the Work has not progressed to the point indicated in Construction Manager's Application for Payment, if adequate supporting documentation is not provided as addressed in Article 8.5 of the Agreement, or the quality of the Work covered is not in accordance with the Contract Documents. In addition, Owner may decide not to pay Construction Manager an appropriate amount because of subsequently discovered evidence or subsequent observations, to the extent necessary to protect itself from loss, because of but not limited to: (i) defective Work of which the Construction Manager has knowledge; (ii) third party claims filed or evidence indicating the filing of such claims; (iii) failure of the Construction Manager to make payments to Subcontractors or others for labor, materials or equipment pursuant to Construction Manager's contracts with such persons or entities; (iv) evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price allocable to the Work; (v) damage to Owner or another contractor, caused by Construction Manager or its subcontractors, and not

paid by Construction Manager's insurance; (vi) evidence that the Work will not be completed by the Scheduled Final Completion Date, as the same may be adjusted by Modification and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (vii) persistent failure to carry out the Work in accordance with the Contract Documents.

- 8.2 Prompt Payment Act – Payments to the Construction Manager will be made pursuant to the Contract Documents and the Local Government Prompt Payment Act, Chapter 218, Florida Statutes, and any subsequent amendments thereto (“Prompt Payment Act”). To the extent that the provisions of Contract Documents differ with the requirements of the Prompt Payment Act, the provisions of the Prompt Payment Act will govern.
- 8.3 On or before the 25th day of each month after commencement of performance, but no more frequently than once monthly, the Construction Manager may submit an Application for Payment for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Construction Manager and Owner.
- 8.4 Said Application for Payment shall be in the format required in the Specification 01290 and include whatever supporting information as may be required by the Owner. Except for Applications for Payment for Design Services and pre-construction services, retainage shall be withheld from each monthly payment request, in an amount not to exceed ten percent (10%) of the approved payment. Pursuant to the requirements of Florida Statutes Section 255.078 (5), upon fifty percent completion, the retainage withheld from future payment applications will be reduced to five percent until the project has reached final completion and accepted by the Owner. Owner may, in Owner's sole discretion, upon written request of Construction Manager, release portions of the retainage allocable to portions of the Work, which have been finally completed prior to Final Completion for all of the Work. Retainage shall be withheld and released in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act Retainage shall not be withheld on fees as set forth in Article 7.1.
- 8.5 Applications for Payment shall be notarized and supported by such data substantiating Construction Manager's right to payment as Owner may reasonably require. This shall include, but not be limited to invoices, subcontractor pay applications, subcontractor releases of lien, buyout savings reconciliation, allowance usage log, contingency usage log, and other documents as required by Owner. The format of the Application for Payment shall be the American Institute of Architects G702© certified and notarized by the Construction Manager and supported by the American Institute of Architects form G703© which shall agree to the schedule of values as described in this agreement. The Construction Manager's final acceptance of the supportability and allowability of the charges submitted in the applications for payment is not inferred through the approval and signature of each monthly pay application that includes the referenced charges.
- 8.6 Each Application for Payment shall be signed by the Construction Manager and shall constitute the Construction Manager's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the requirements of the Contract Documents, that the costs being billed have actually been incurred and that the Construction Manager knows of no reason why payment should not be made as requested.

8.7 Thereafter, the Owner shall:

- .1 Review the Application for Payment and review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by the Contract Documents.
 - .2 Approve in writing the amount which, in the opinion of the Owner, is properly owing to the Construction Manager.
- 8.8 The amount of each such payment shall be the amount approved for payment by the Owner less such amounts, if any, otherwise owing by the Construction Manager to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents.
- 8.9 The submission by the Construction Manager of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, or other encumbrance by any person whatsoever.
- 8.10 As a condition precedent to partial payment, the Construction Manager shall, as required elsewhere in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, and/or properly executed documents reflecting that all subcontractors, materialmen, suppliers or others having rights, have acknowledged receipt of all sums due pursuant to all prior Payment Requests.
- 8.11 Furthermore, the Construction Manager warrants and represent that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.
- 8.12 Not Used
- 8.13 When payment is received from the Owner, the Construction Manager shall pay all subcontractors, materialmen, laborers and suppliers the amounts justly due for all Work covered by such payment in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act. In the event such payments are not made in a timely manner the Owner may, in its discretion, invoke reasonable procedures in order to protect Owner's interest or Owner's desire to assist in having subcontractors, laborers, suppliers, materialmen or others paid. By the Owner invoking reasonable procedures, it shall not relieve the Construction Manager of its responsibilities for payments under the contract.
- 8.14 It is mutually agreed that any payments made under this Contract, including but not limited to final payment, shall not constitute acceptance of defective or improper materials or workmanship nor shall same act as a waiver or release of future performance in accordance with the Contract Documents.
- 8.15 Final Payment. Construction Manager's application for final payment shall be accompanied by a completed and notarized Certificate of Contract Completion. Any items required by the Contract Documents not previously submitted shall accompany the Application for Final Payment. Neither final payment nor amounts retained, if any, shall become due until Construction Manager submits to Owner: (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or

encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or shall be paid from funds received from Owner; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (iii) a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) consent of surety, if any, to final payment and (v) a final accounting of the Cost of Work. Acceptance of final payment shall constitute a waiver of all claims by Construction Manager.

- 8.16 Within seven (7) days of receipt of payment from the Owner, Construction Manager shall pay each Subcontractor, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payment to Construction Manager on account of such Subcontractor's work. The Construction Manager will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 8.17 Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner in writing.
- 8.18 Withholding Payments To Subcontractors - The Construction Manager shall not withhold payments justly due to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and project bookkeeping as required. Payments to subcontractors shall comply with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act.
- 8.19 Warranty Payments - To the extent a percentage of Construction Manager's fee or a dollar amount is due for services rendered during the warranty phase, Construction Manager shall receive 50% of said fee if the six (6) month warranty inspection work is satisfactorily completed and the balance due if the eleventh (11th) month warranty inspection work is satisfactorily completed.
- 8.20 Delayed Payments by Owner - Payments will comply with Section 218.70, Florida Statutes, and other relevant provisions of the Local Government Prompt Payment Act, as amended.
- 8.21 Underpayment by Construction Manager - If, in the performance of the Agreement, there is underpayment of moneys due from Construction Manager to consultants, Subcontractors, materialmen, laborers or suppliers, Owner may, at its option, withhold from Construction Manager, out of payments due it, an amount sufficient to pay to consultants, Subcontractors, materialmen, laborers or suppliers underpaid the difference between the amounts required to be paid to such consultants, Subcontractors, materialmen, laborers or suppliers and the amounts actually paid. The amounts withheld shall be disbursed by Owner to the respective consultants, Subcontractors, materialmen, laborers or suppliers to whom they are due, provided Owner shall consult with Construction Manager before disbursing such amounts to determine whether there are any outstanding disputes between Construction Manager and such persons or entities justifying the withholding of such amounts.
- 8.22 Right to Require Documentation and Audit. Owner may, as deemed necessary, require from the Construction Manager, support and documentation for any submission, including but not limited to applications for payment. Upon execution of this Agreement, the Construction Manager agrees that Owner shall have unrestricted access during normal working hours to all of Construction

Manager's records relating to this project including but not limited to hard copy as well as electronic records for a period of three years after final completion.

**ARTICLE 9
CONTRACT BOND**

- 9.1 The Agreement shall become effective and in full force only upon the execution of this agreement. The payment and performance bonds issued by a Surety Company acceptable to Owner in its sole discretion, such Surety being qualified and rated in accordance with the General Conditions, and approved by the United States Treasury Department and licensed to do business in the State of Florida shall be delivered with the executed GMP Addendum.
- 9.2 The GMP Addendum must be executed and signed by a resident agent having an office in Florida, representing such Surety Company, for one hundred per cent (100%) of the Contract price, said bond guaranteeing the performance of this Agreement and as security for the payment of all persons performing labor and providing materials in connection with this Contract.
- 9.3 The form of Bonds required is included in Article 29 of the General Conditions. This is in addition to any bonds of subcontractors or others.

**ARTICLE 10
NOTICES**

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

Party:		Address:
Owner:	SUPERINTENDENT OF SCHOOLS The School Board of Broward County, Florida	600 Southeast Third Avenue Fort Lauderdale, FL 33301 Attn: Mr. Robert Runcie
With Copy To:	Executive Director, Capital Programs	Office of Facilities & Construction 600 Southeast Third Avenue Fort Lauderdale, FL 33301 Attn: Mr. Frank Girardi
Construction Manager:	Messam Construction d/b/a Asset Builders, LLC	3600 Red Road – Suite 3030 Miramar, FL 33025
Surety:	United States Fire Insurance Company	30 Madison Avenue Morristown, NJ 07962
Surety's Agent:	Nielson, Hoover & Associates	8000 Governors Square Blvd #101 Miami Lakes, FL 33016
Project Consultant:	D.L. Fields Consultants, LLC	1125 NE 125 th Street – Suite 210 Miami, FL 33161

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

ARTICLE 11
AUTHORITY PROVISION

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

ARTICLE 12
NON-DISCRIMINATION PROVISION

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

ARTICLE 13
CAPTION PROVISION

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

ARTICLE 14
ASSIGNMENT PROVISION

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

ARTICLE 15
EXCESS FUNDS PROVISION

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

ARTICLE 16
BACKGROUND SCREENING

16.1 Background Screening – Construction Manager agrees to comply with all requirements of Sections 1012.32, 1012.465 and 1012.467, Florida Statutes, as amended from time to time, and that Construction Manager, its agents, subcontractors and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by Owner in advance of Construction Manager or its personnel providing any services under the conditions described in the previous sentence. Construction Manager will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Construction Manager and its personnel. The Parties agree that the failure of Construction Manager to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Owner to terminate immediately for cause with no further responsibilities to make payment or perform any other duties under this Agreement.

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

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

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

ARTICLE 17
CONSULTANTS COMPETITIVE NEGOTIATION ACT

17.1 If the total fee paid to the Construction Manager exceeds \$195,000, the following provisions of the Consultants Competitive Negotiation Act, Section 287.055(5)a., Florida Statutes shall apply:

1) The Construction Manager shall execute and furnish to Owner a Truth-In-Negotiation certificate (Exhibit “___”) stating that wage rates and other factual unit costs supporting compensation are accurate, complete and current at the time of executing the contract.

2) The original contract amount and any additions thereto shall be adjusted to exclude any significant sums when Owner determines the contract amount was increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs.

17.2 The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Construction Manager any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement

ARTICLE 18
COMPLIANCE WITH SCHOOL CODE

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

ARTICLE 19
PUBLIC RECORDS LAWS

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

ARTICLE 20
TAXES AND DIRECT OWNER PURCHASE OPTION

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

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

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

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

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

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

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

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

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

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

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

organize and deliver all such items to Owner as part of its requirements for achieving Substantial Completion of the Work.

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

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

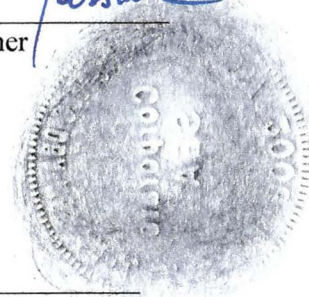
In witness thereof, the Messam Construction d/b/a Asset Builders, LLC (Construction Manager), and the Owner, The School Board of Broward County, Florida have caused this Agreement to be executed and their corporate seal affixed by and through their proper offices, thereunto duly authorized, on this day and year first above written.

OWNER

THE SCHOOL BOARD BROWARD COUNTY, FLORIDA

Messam Construction d/b/a Asset Builders, LLC
Wayne M. Messam
Wayne M. Messam, Partner

SEAL



By: _____
Donna P. Korn, Chair

By: _____
Attest Secretary

-Or-

By: _____
Robert W. Runcie
Superintendent of Schools

By: *Magueline J. ...*
Witness
By: *...*
Witness

Approved as to Form and Legal Content:

[Signature]
Office of the General Counsel

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 4th day of May, 2020 by Wayne M. Messam on behalf of Messam Construction d/b/a Asset Builders, LLC

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

My commission expires:




Jacqueline Dorval
Signature, Notary Public
Jacqueline Dorval
Printed Name of Notary

ACKNOWLEDGMENT

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

SURETY: United States Fire Insurance Company

By: Charles D. Nielson
Its: Charles D. Nielson, Atty.-In-Fact
Date: May 4, 2020



STATE OF Florida

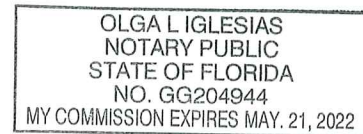
COUNTY OF Broward

The foregoing instrument was subscribed and sworn to by

Charles D. Nielson before me this 4th day of May, 2020.

My commission expires:

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



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

00927402020

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, Jarrett Merlucci*

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, 2021.

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, 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 22nd day of August 2019.

UNITED STATES FIRE INSURANCE COMPANY



A.R.R.

Anthony R. Slimowicz, Executive Vice President

State of Pennsylvania }
County of Philadelphia }

On this 22nd day of August 2019, before me, a Notary public of the State of Pennsylvania, 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.

Commonwealth of Pennsylvania – Notary Seal
Tamara Watkins, Notary Public
Philadelphia County
My commission expires August 22, 2023
Commission number 1348843

Tamara Watkins

Tamara Watkins

(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 4 day of May 2020

UNITED STATES FIRE INSURANCE COMPANY



Al Wright

Al Wright, Senior Vice President

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

GMP AMENDMENT

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

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

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

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

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

.1 The Owner and the Construction Manager acknowledge and agree that the Owner will suffer damages if the Construction Manager fails to achieve Substantial Completion of the entire Work, as defined in the Contract Documents, on or before the expiration of the Contract Time, which damages are difficult, if not impossible, to ascertain with any degree of certainty. Accordingly, if the Construction Manager fails to achieve Substantial Completion of the entire Work for this Project on or before the expiration of the Contract Time, liquidated damages (which are not intended as a penalty) shall be assessed against the Construction Manager in an amount of five hundred dollars (\$500) per calendar day.

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

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

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

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

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

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

place of this Project.

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

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

(SEAL)

THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

Donna P. Korn, Board Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR [TYPE THE NAME OF THE COMPANY]

(CORPORATE SEAL)

[TYPE THE NAME OF THE COMPANY]

ATTEST:

By: _____
Signature

, Secretary

Printed Name

Title

Witness

Witness

ACKNOWLEDGEMENT

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 2020 by [TYPE THE NAME OF THE PERSON] on behalf of [TYPE THE NAME OF THE COMPANY].

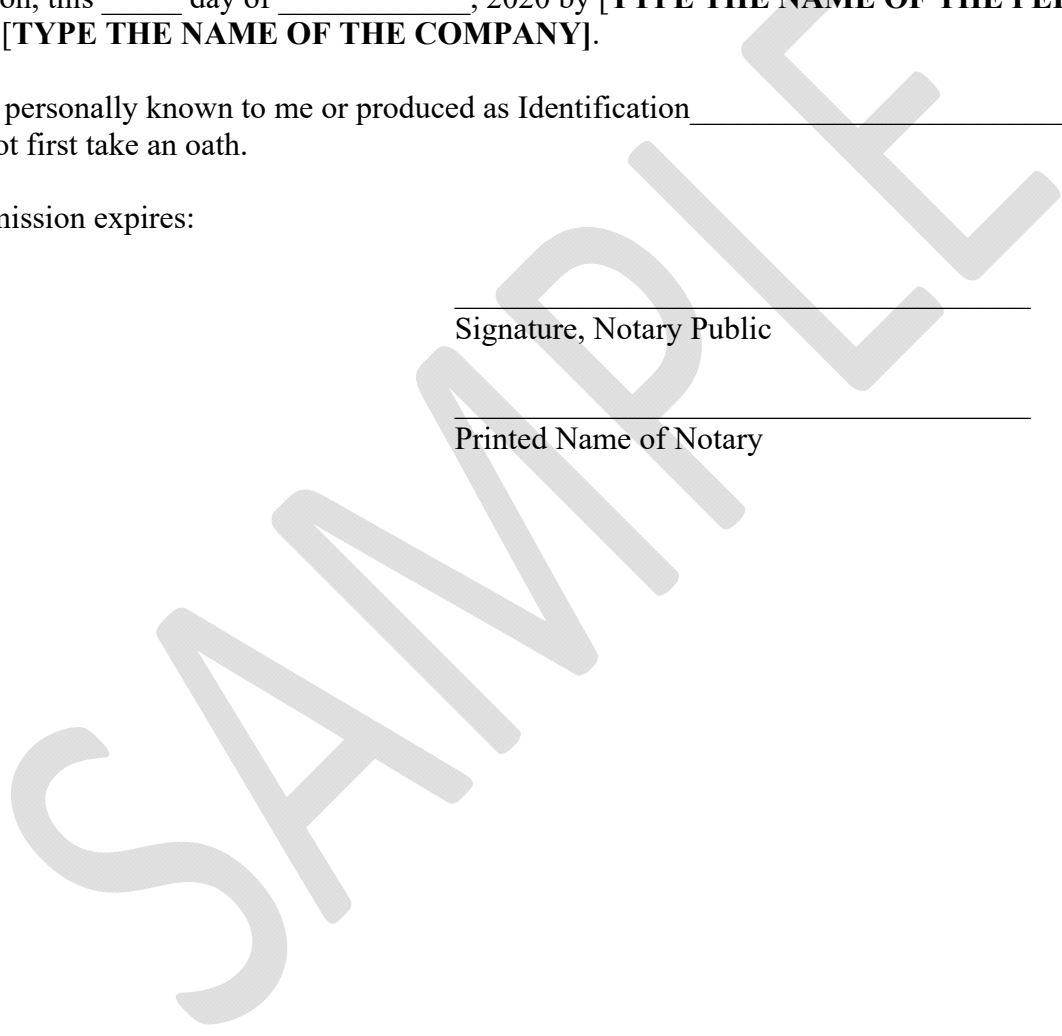
He/she is personally known to me or produced as Identification _____ and did/did not first take an oath.

My commission expires:

Signature, Notary Public

(SEAL)

Printed Name of Notary



ATTACHMENTS

ATTACHMENT I - CONTRACT DOCUMENTS - THE DRAWINGS

ATTACHMENT II - CONTRACT DOCUMENTS - THE SPECIFICATIONS

ATTACHMENT III - CONTRACT DOCUMENTS - ADDITIONAL CONTRACT DOCUMENTS

ATTACHMENT IV - CONTRACT DOCUMENTS - SALARY AND WAGE SCHEDULE

ATTACHMENT V - CONTRACT DOCUMENTS - THE CONSTRUCTION SCHEDULE

END OF EXHIBIT "A"

EXHIBIT B

LUMP SUM FEE BY TASK

**Construction Management At-Risk For
Lyons Creek Middle School AT
4333 Sol Press Blvd., Coconut Creek, FL. 33073**

RFQ NO./PROJECT NO. FY20-184 – Package C / P.002141

FIRM NAME:	Asset Builders, LLC d/b/a Messam Construction – 3600 Red Road – Ste. #303, Miramar, FL. 33025
DATE:	<u>4/2/2020 From 10:00 AM – 12:00 PM & 4/6/2020 From 1:00 PM – 2:00 PM</u>

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

PRE-CONSTRUCTION SERVICE	LUMP SUM FEE (PER TASK)
1. Phase I – Schematic Design	\$10,500
2. Phase II – Design Development	\$7,000
3. Phase III – 50% Construction Documents	\$17,500
4. Phase III – 100% Construction Documents	\$14,000
5. Phase IV - Bidding / GMP, Submittal / GMP, Negotiations / Award of GMP Amendment	\$21,000
TOTAL PRE-CONSTRUCTION FEE	\$ 70,000
CONSTRUCTION PHASE	
6. Construction Manager’s Fee (percentage of COW)	5.55%

EXHIBIT C

Construction Manager's Proposal

To be added at contract execution

SAMPLE



**Negotiations for RFQ# FY20-184
CMAR Services for Lyons Creek Middle School**



April 6, 2020

Ms. Cheryl Fields, Construction Purchasing
 Procurement & Warehousing Services
 The School Board of Broward County, Florida
 7720 West Oakland Park Boulevard
 Sunrise, Florida 33351

RE: Proposal Letter for Lyons Creek Middle School, RFQ FY20-184 – Package C

Dear Ms. Fields,

On behalf of Asset Builders, LLC D/B/A Messam Construction. (Messam), we would like to thank your Selection Committee and The School Board of Broward County, Florida for selecting our company as your construction manager-at risk for the Lyons Creek Middle School (RFQ FY20-184 Package C). We are extremely excited for the opportunity to work with SBBC on this fantastic project.

We understand the scope of work as defined in the RFQ and as summarized below by the Fixed Limit of Construction Cost (FLCC) provided by SBBC:

SCOPE	Total Funds	Modifications	Scope Included	RFQ Funds	FLCC
Pedestrian Bridge	\$90,502		NO		
Art Room Renovation and Equipment	\$85,000		YES	\$85,000	\$57,327
Music Room Renovation	\$521,000		YES	\$521,000	\$351,379
Music Equipment Replacement	\$100,000		NO		
Conversion of Existing Space to Music / Art	\$928,000		YES	\$928,000	\$625,872
School Choice Enhancement	\$100,000		NO		
HVAC Improvements	\$264,000		YES	\$264,000	\$178,000
Building Envelope Improvements	\$1,251,000		YES	\$1,251,000	\$843,714
Additional Computers to Close Computer Gap	\$225,000		NO		
Technology Infrastructure Upgrade	\$192,000		NO		
CAT 6 Data Port Upgrade	\$11,000		NO		
TOTAL	\$3,767,502			\$3,049,000	\$2,056,342

Advertised Estimated Cost of Construction: \$4,800,000

Messam proposes the following fees:

1. **Lump Sum Preconstruction Fee:** \$70,000, summarized in Exhibit B - Lump Sum Fee By Task
2. **Construction Manager's Fee:** 5.55% of the Cost of Work
3. **Liquidated Damages:** \$500/Day until Substantial Completion | \$250/day until Final Completion
4. **Labor Burden**
 - a. FICA – 0.0765
 - b. FUTA – 0.0018
 - c. SUTA – 0.0125
 - d. MEDICARE – .0145
 - e. RETIREMENT – .0600 (0.04 Discount)
 - f. HEALTH – .1020
 - g. PAID TIME OFF - .0850
 - h. WORKERS' COMPENSATION – .0905TOTAL = .4428
MULTIPLIER – 1.4428

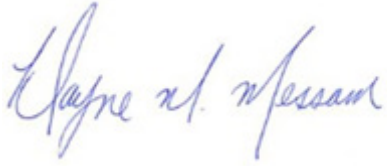
Additionally, as indicated in our RFQ Submittal, we confirm the following M/WBE participation commitments:

1. 100% CM Services for Preconstruction and Construction phases by our firm Messam Construction who is certified by the School Board of Broward County as an African American MBE.
2. A minimum of 29% MWBE participation including, a minimum of 8% African American and 8% Women Owned Businesses, of our GMP Value utilizing School Board of Broward County-certified M/WBE subcontractor firms.



We look forward with genuine excitement to the opportunity of working with you on this project.

Sincerely,



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

Enclosures: Exhibit B - LUMP SUM FEE BY TASK
Exhibit A – Construction Team Assigned Representatives
Exhibit B - Construction Manager's Personnel
Fee Breakdown

EXHIBIT B

LUMP SUM FEE BY TASK

**Construction Management At-Risk For
Lyons Creek Middle School AT
4333 Sol Press Blvd., Coconut Creek, FL. 33073**

RFQ NO./PROJECT NO. FY20-184 – Package C / P.002141

FIRM NAME:	Asset Builders, LLC d/b/a Messam Construction – 3600 Red Road – Ste. #303, Miramar, FL. 33025
DATE:	<u>4/2/2020 From 10:00 AM – 12:00 PM & 4/6/2020 From 1:00 PM – 2:00 PM</u>

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3. Phase III – 50% Construction Documents	\$17,500
4. Phase III – 100% Construction Documents	\$14,000
5. Phase IV - Bidding / GMP, Submittal / GMP, Negotiations / Award of GMP Amendment	\$21,000
TOTAL PRE-CONSTRUCTION FEE	\$ 70,000
CONSTRUCTION PHASE	
6. Construction Manager’s Fee (percentage of COW)	5.55%

EXHIBIT A
CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner

<u>Individual</u>	<u>Title</u>
	Superintendent of Schools
	Chief Facilities and Construction Officer

Owner's Representative

<u>Individual</u>	<u>Title</u>
	Project Manager

Project Consultant

<u>Individual</u>	<u>Title</u>
	Project Principal
	Project Manager
	Site Representative

Construction Manager

<u>Individual</u>	<u>Title</u>
Wayne Messam & Angela Messam	Project Principal
Ivey Kearson	Project Manager
Peter Codrington	Site Superintendent

**EXHIBIT B
CONSTRUCTION MANAGER'S PERSONNEL**

PRECONSTRUCTION PHASE STAFF (included in Preconstruction Services Fee)

<u>Individual</u>	<u>Title</u>	<u>% of Time assigned to project</u>
Wayne Messam	Project Principal	10%
Angela Messam	Project Principal	10%
Ivey Kearson	Project Manager	30%
Akash Patnaik	Asst Project Manager	20%
Steve Messam	MWBE SBE Outreach	20%
Limreal Blanc	Estimator	40%
Aniket Patil	Scheduler	20%

CONSTRUCTION PHASE - OFF-SITE SUPPORT STAFF (included in Construction Management Fee unless approved in writing by Owner)

<u>Individual</u>	<u>Title</u>	<u>% of Time assigned to project</u>

CONSTRUCTION PHASE - ON-SITE SUPPORT STAFF (included in Construction Manager's lump sum General Conditions cost as part of GMP)

<u>Individual</u>	<u>Title</u>	<u>% of Time assigned to project</u>

Pre-Construction Services Proposed Estimate of Costs

RFQ #FY20-184 - Lyons Creek Middle School								
Broward County Public Schools								
Position	Hourly Rate	Labor Burden Rate	Total Hourly Rate	3.2.1		3.2.2		3.2
				Review of Project Docs	Fee	Establish Preliminary Master Schedule	Fee	Analysis of Bid Packages of existing conditions
Project Principal	\$96.00	1.4428	\$138.51	INCLUDED WITH 3.3.2		2.00	\$277.02	2.00
Project Manager	\$78.00	1.4428	\$112.54			26.00	\$2,926.00	25.00
Project Superintendent	\$90.00	1.4428	\$129.85			7.99991800	\$1,038.81	5.0000539070
Asst. Project Manager	\$62.00	1.4428	\$89.45			0.00	\$0.00	0.00
Project Coordinator	\$47.00	1.4428	\$67.81			0.00	\$0.00	0.00
Safety Manager	\$64.00	1.4428	\$92.34			0.00	\$0.00	2.00
Project Accountant	\$56.00	1.4428	\$80.80			0.00	\$0.00	0.00
M/WBE Outreach Manager	\$48.00	1.4428	\$69.25			0.00	\$0.00	0.00
Estimator	\$77.00	1.4428	\$111.10			30.00	\$3,332.87	0.00
Scheduler	\$76.00	1.4428	\$109.65			52.00	\$5,701.95	40.00
Total Fee							\$13,276.63	
Total Hours						117.999918		74.00005391

Pre-Construction Services Proposed Estimate of Costs

3	3.2.4	3.2.5		3.2.6		3.2.7		3.2.8		
Fee	N / A	Project Delivery Options	Fee	Monthly Reporting	Fee	Work Plan / Job Responsibilities	Fee	M/WBE Outreach / Market Solicitation	Fee	Responsibility Assignment
\$277.02		0.00	\$0.00	1.00	\$138.51	2.00	\$277.02	2.00	\$277.02	1.00
\$2,813.46		5.00	\$562.69	3.00	\$337.62	2.00	\$225.08	20.00	\$2,250.77	2.00
\$649.27		2.000002	\$259.70	0.00	\$0.00	2.00	\$259.70	0.00	\$0.00	0.00
\$0.00		0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00
\$0.00		0.00	\$0.00	8.00	\$542.49	1.00	\$67.81	10.00	\$678.12	0.00
\$184.68		0.00	\$0.00	1.00	\$92.34	0.00	\$0.00	0.00	\$0.00	0.00
\$0.00		0.00	\$0.00	2.00	\$161.59	0.00	\$0.00	0.00	\$0.00	0.00
\$0.00		0.00	\$0.00	5.00	\$346.27	0.00	\$0.00	45.00	\$3,116.45	0.00
\$0.00		1.00	\$111.10	1.00	\$111.10	0.00	\$0.00	1.00	\$111.10	1.00
\$4,386.11		1.00	\$109.65	1.00	\$109.65	3.00	\$328.96	0.00	\$0.00	0.00
\$8,310.53			\$1,043.14		\$1,839.57		\$1,158.57		\$6,433.45	
		9.000002		22		10		78		4

Pre-Construction Services Proposed Estimate of Costs

Scope of Work per Contract Clauses											
3.2.9	3.3.1		3.3.2		3.3.3		3.3.4		3.3.5		3.3.6
Fee	Meeting Attendance and Reporting	Fee	Constructability Reviews	Fee	Working Relationship with Project Consultant	Fee	Cost Estimating SD, DD ,50% CD & 100% CD	Fee	Value Engineering Recommendations		Coordination, Completeness, and Constructabil
\$138.51	0.50	\$69.25	0.50	\$69.25	1.00	\$138.51	1.00	\$138.51	0.00	\$0.00	
\$225.08	4.00	\$450.15	6.00	\$675.23	2.00	\$225.08	20.00	\$2,250.77	5.00	\$562.69	
\$0.00	1.00	\$129.85	2.00	\$259.70	1.00	\$129.85	5.00	\$649.26	2.00	\$259.70	
\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	
\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	2.00	\$135.62	0.00	\$0.00	
\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	
\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	2.00	\$161.59	0.00	\$0.00	
\$0.00	0.50	\$34.63	0.00	\$0.00	0.00	\$0.00	1.00	\$69.25	0.00	\$0.00	
\$111.10	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1.00	\$111.10	4.00	\$444.38	
\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1.00	\$109.65	0.00	\$0.00	
\$474.68	\$0.00	\$683.89	\$0.00	\$1,004.19		\$493.44		\$3,625.76		\$1,266.78	
	6		8.5		4		33		11		

Pre-Construction Services Proposed Estimate of Costs

3.6	3.3.7		3.3.8		3.3.9		3.3.10	3.3.11	3.4.1		
Fee	Updates to Master Project Schedule	Fee	Periodic Estimate Updates / Fee Trending	Fee	Formal Review of the Plans / Specifications for	Fee	Disclaimer of Warranty	Fast Track Construction	Obtaining Bids and Awarding Contracts	Fee	Creation of Bid Packages / Subcontractor List fo
INCLUDED WITH 3.3.7	0.00	\$0.00	0.00	\$0.00	INCLUDED WITH 3.3.2				0.50	\$69.25	0.00
	2.00	\$225.08	1.00	\$112.54					4.00	\$450.15	4.00
	0.00	\$0.00	0.00	\$0.00					0.00	\$0.00	0.00
	0.00	\$0.00	0.00	\$0.00					0.00	\$0.00	0.00
	0.00	\$0.00	0.00	\$0.00					2.00	\$135.62	6.00
	0.00	\$0.00	0.00	\$0.00					0.00	\$0.00	0.00
	0.00	\$0.00	0.00	\$0.00					2.00	\$161.59	4.00
	0.00	\$0.00	0.00	\$0.00					2.00	\$138.51	4.00
	2.00	\$222.19	4.00	\$444.38					1.00	\$111.10	1.00
	8.00	\$877.22	0.00	\$0.00					1.00	\$109.65	1.00
		\$1,324.49		\$556.92					\$1,175.88		
	12		5					12.5		20	

Pre-Construction Services Proposed Estimate of Costs

3.4.2	3.4.3		3.4.4		3.4.5		3.4.6	3.4.7		
Fee	Bid Package	Fee	Pre-Bid Conferences	Fee	Bid Evaluation	Fee	Blank	Creation of GMP	Fee	Buyout Reconciliation Log
\$0.00		\$0.00	1.00	\$138.51	1.00	\$138.51		4.00	\$554.04	1.00
\$450.15	20.00	\$2,250.77	3.00	\$337.62	39.51	\$4,446.38		33.00	\$3,713.77	20.00
\$0.00		\$0.00	1.00	\$129.85	1.00	\$129.85		3.00	\$389.56	20.00
\$0.00	4.00	\$357.81	0.00	\$0.00	2.00	\$178.91		1.00	\$89.45	0.00
\$406.87	10.00	\$678.12	3.00	\$203.43	8.00	\$542.49		5.00	\$339.06	2.00
\$0.00		\$0.00	0.00	\$0.00	0.00	\$0.00		0.00	\$0.00	0.00
\$323.19		\$0.00	0.00	\$0.00	0.00	\$0.00		0.00	\$0.00	0.00
\$277.02	2.00	\$138.51	6.00	\$415.53	6.00	\$415.53		4.00	\$277.02	2.00
\$111.10		\$0.00	0.00	\$0.00	10.00	\$1,110.96		8.00	\$888.76	5.00
\$109.65		\$0.00	0.00	\$0.00	5.00	\$548.26		8.00	\$877.22	5.00
\$1,677.98		\$3,425.21		\$1,224.94		\$7,510.89			\$7,128.87	\$0.00
	36		14		72.5099			66		55

Pre-Construction Services Proposed Estimate of Costs

3.4.8	3.4.9	
Fee	Intent to Self Perform	Total
\$138.51		
\$2,250.77		
\$2,597.04		
\$0.00		
\$135.62		
\$0.00		
\$0.00		
\$138.51		
\$555.48		
\$548.26		
\$6,364.19		\$70,000.00
		671

EXHIBIT D
CMAR RFQ Document

To be added at contract execution

SAMPLE

REQUEST FOR QUALIFICATIONS
RFQ # FY20-184

CONSTRUCTION MANAGEMENT AT RISK SERVICES

Package A – New Renaissance Middle School / Package B – Monarch High School
Package C – Lyons Creek Middle School / Package D – Cresthaven Elementary School



The School Board of Broward County, Florida

Donna P. Korn, Chair
Dr. Rosalind Osgood, Vice Chair

Lori Alhadeff
Robin Bartleman
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Nora Rupert

Robert W. Runcie, Superintendent of Schools

Frank L. Girardi, Executive Director, Capital Programs
Barbara J. Myrick, General Counsel

Office of Facilities and Construction
Procurement and Warehousing Services

NOTICES TO ALL SUBMITTING FIRMS

Cone of Silence and Lobbyist Activities

For Cone of Silence requirements and for Lobbyist Activity restrictions refer to Section 1, Introduction and General Information lines labeled Cone of Silence and Lobbyist Activities. Line numbers 1.10 and 1.11 and to School Board Policies 3320 and 1100B.

Pre-Qualification of Contractors Notice

For Pre-Qualification of Contractors requirements refer to Section 3, RFQ Conditions line labeled Pre-Qualification of Contractors. Line number 3.29 and sub-lines.

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Procurement and Warehousing Services Department
7720 W. Oakland Park Boulevard, Suite 323
Sunrise, Florida 33351-6704



REQUEST FOR QUALIFICATIONS (RFQ)

RFQ # FY20-184

CONSTRUCTION MANAGEMENT AT RISK SERVICES

RFQ Issue Date: December 11, 2019

This RFQ is intended to result in the award of separate Construction Manager At Risk Services contracts to four (4) different firms. One contract is to be awarded for each Package (Package A, Package B, Package C, and Package D). Respondents should only submit one (1) Qualifications Statement in response to the RFQ, which will be evaluated by the District. Deviation from this requirement will not be considered. The four (4) top ranked Submitting Firms resulting from Part B may be awarded a contract per section 5.0.

Description of Scope:

The Construction Management at Risk Services scope of work for the following projects, generally consists of:

Package A: P.002143 - New Renaissance Middle School

- HVAC Improvements
- Building Envelope Improvements (Roofing, Stucco Work, Exterior Painting)

Package B: P.002148 – Monarch High School

- HVAC Improvements
- Building Envelope Improvements (Roofing, Lightning Protection)

Package C: P.002141 – Lyons Creek Middle School

- HVAC Improvements
- Building Envelope Improvements (Roofing)
- Art Room Renovation and Equipment
- Music Room Renovation and Conversion of Existing Space to Music / Art

Package D: P.001676 – Cresthaven Elementary School

- HVAC Improvements
- Building Envelope Improvements (Roofing, Exterior Painting)

NOTICES TO ALL SUBMITTING FIRMS

Cone of Silence and Lobbyist Activities

For Cone of Silence requirements and for Lobbyist Activity restrictions refer to Section 1, Introduction and General Information lines labeled Cone of Silence and Lobbyist Activities. Line numbers 1.10 and 1.11 and to School Board Policies 3320 and 1100B.

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Attachments

<u>Attachment A</u>	-- Supplier Diversity Outreach Program Guidelines (Document 00467) *Updated
<u>Attachment A.1</u>	-- Small/Minority/Women Business Enterprise (S/M/WBE) Subcontractor Participation Schedule
<u>Attachment A.2</u>	-- Statement of Intent to Perform as an S/M/WBE Subcontractor
<u>Attachment A.3</u>	-- S/M/WBE Monthly Subcontractor Utilization Report
<u>Attachment A.4</u>	-- S/M/WBE Good Faith Effort Form
<u>Attachment A.5</u>	-- Statement of Intent for M/WBE Construction Manager Participation
<u>Attachment B.1</u>	-- Bidder/Proposer Assurance Statement *New
<u>Attachment B.2</u>	-- Prime/Subcontractor Terms & Conditions *New
<u>Attachment C</u>	-- Sample Construction Management at Risk Agreement (With Exhibits)
	Exhibit A GMP Amendment Form
	Exhibit B Compensation
	Exhibit C CM Firm's Qualifications Statement (not attached to RFQ)
	Exhibit D SBBC RFQ Documents (not attached to Sample)
<u>Attachment D</u>	-- Sample General Conditions of the Contract – Construction Management at Risk
<u>Attachment E</u>	-- Required Response Form
<u>Attachment F</u>	-- Proposer's Request for Information Form (for use by Submitting Firm)
<u>Attachment G</u>	-- Project Scope of Work
<u>Attachment H</u>	-- Authorization to Proceed Form
<u>Attachment I</u>	-- ACH Payment Agreement Form
<u>Attachment J</u>	-- Conflict of Interest
<u>Attachment K</u>	-- Project Relevancy / Reference Form
<u>Attachment L</u>	-- Qualification Selection Evaluation Committee Scoring Rubric *Updated

RFQ Online Attachment Links

Online Documents: The following documents shall be downloaded by the Construction Manager ("CM") and are considered as RFQ and Contract Attachments, and requirements of the Contract:

Division 0 - Specifications

<http://www.broward.k12.fl.us/constructioncontracts/D0docs.html>

Design Standards

<http://www.broward.k12.fl.us/constructioncontracts/DivisiononeDesignStandards.html>

- SBBC Design Criteria
 - Specifications – Division 1 through 17
 - Document Submittal Checklist for Plan Review
 - Design Guidelines

Note the following:

For SBBC's Design and Materials Standards downloaded from SBBC's website – the word 'Contractor' shall be interpreted as the word 'Construction Manager' in every instance that the word Contractor is used in these standards.

- State Requirements for Educational Facilities (SREF) latest edition:
<http://www.fldoe.org/edfacil/sref.asp>

SECTION 1.0 - INTRODUCTION AND GENERAL INFORMATION

1.1 The School Board of Broward County, Florida (hereinafter referred to as "SBBC") desires to receive Qualifications Statements for Construction Management at Risk Services as described herein. Submitting firms will be referred to as "Construction Manager" or "CM" throughout this document.

1.2 **Questions and Interpretations:** Any questions, requests for clarifications or interpretations regarding any portion of this RFQ (or reporting errors, inconsistencies, or ambiguities) during the Submittal preparation period shall be received no later than the date stated in Section 2.0 (which will not be less than ten (10) business days prior to the deadline due date for submitting the completed RFQ response), and no questions or clarifications will be considered after this date. Construction Managers must submit **Document 00220 – Proposer's Request for Information (RFI) Form** for all RFI requests and all RFI requests must be typed or printed. Questions not submitted on Document 00220 will not be considered. RFI requests must be for a single RFQ, RFI requests for multiple RFQs may not be considered. Any questions which require a response which amends the RFQ document in any manner will be answered via Addendum by the Procurement and Warehousing Services Department and provided to all Submitting Firms. Address questions or requests for clarifications in writing to:

Cheryl Fields
Purchasing Agent
Procurement & Warehousing Services
7720 West Oakland Park Blvd - Suite 323
Sunrise, FL 33351
754-321-0533 Fax
E-mail: CFields@browardschools.com

1.3 Any verbal or written information, which is obtained other than by information in this RFQ document or by Addenda, shall not be binding on SBBC.

1.4 **Contract Term and Type:**

- a. The term of any awarded contract is anticipated to begin on the Authorization to Proceed (ATP) Date and end one (1) year after final completion of the project.
- b. The initial contract will be a lump sum contract to provide preconstruction services. Additionally, the Construction Management fee for the construction phase will also be set with the initial contract.
- c. Through contract amendment, a Guaranteed Maximum Price (GMP) shall be negotiated and established when the 100% Design Submittal Stage is accepted by the Owner. GMP negotiations will commence at the beginning of the design development stage and will conclude when the GMP is set.

1.5 **Qualifications Statement Format:** Any response to the RFQ shall follow the format and include the information as identified in Section 4.0 of this RFQ.

1.6 **Evaluation and Award:** All Qualifications Statements will be evaluated by the Qualifications Selection Evaluation Committee (QSEC) and District staff based upon the information submitted by CM(s) in response to this RFQ and in accordance with the evaluation criteria established in Section 5.0. Based upon the evaluation of Qualifications Statements, QSEC will recommend one or more CM(s) to the Superintendent of Schools who may then recommend one of more CM(s) to SBBC for award.

1.7 **Withdrawal of Qualifications Statement:** A Qualifications Statement may be withdrawal at any time, in writing, prior to the start of QSEC Part A for the applicable RFQ.

1.8 **Qualifications Statement Package Requirements:**

- One (1) complete, original hard-copy Qualifications Statement (clearly labeled as “original”).
- One (1) complete, original electronic version (clearly **labeled as “original”**), which must be identical to the hard-copy original. Electronic version should clearly identify the RFQ # and Firm Name.
- Two (2) complete, electronic version copies (clearly **labeled as “copy”**), which must be identical to the original electronic version. Electronic version should clearly identify the RFQ # and Firm Name.
- Six (6) additional hard-copies (which must be identical to the original Qualifications Statement except they shall be **labeled as “copy”**).
- Qualifications Statements shall be submitted in a sealed envelope (package, box, etc.) with the RFQ number and description clearly identified by label on the Package along with the CMs Name.

1.9 **Gratuities:** CMs shall not provide any gratuities, favors, or anything of monetary value to any official, employee, or agent of SBBC; including any School Board Member, Superintendent of Schools and any QSEC Members, for any reason during this entire procurement process.

1.10 **Cone of Silence:** Any CM, or lobbyist for a CM, is prohibited from having any communications (except as provided in this rule) concerning any solicitation for a competitive procurement with any School Board Member, the Superintendent, any QSEC Member, or any other school district employee after the Procurement and Warehousing Services Department releases a solicitation to the general public. All communications regarding this solicitation shall be directed to the designated Purchasing Agent unless otherwise notified by the Procurement and Warehousing Services Department. This “Cone of Silence” period shall go into effect upon the time of release of the solicitation and shall remain in effect until SBBC either awards a contract or rejects all Qualifications Statements. Further, any CM, its principals, or its lobbyists shall not offer campaign contributions to School Board Members or offer contributions to School Board Members for campaigns of other candidates for political office during the period in which the vendor is attempting to sell goods or services to SBBC. This period of limitation of offering campaign contributions shall commence at the time of the “cone of silence” period for any solicitation for a competitive procurement as described by School Board Policy 3320, Part II, Section GG as well as School Board Policy 1007, Section 5.4 – Campaign Contribution Fundraising. Any CM or its lobbyist who violates this provision shall cause the CM's Qualifications Statement to be considered non-responsive and therefore be ineligible for award. This prohibition does not apply to:

1. Telephone calls to the Procurement & Warehousing Services staff to request copies of this RFQ, to confirm attendance, or request directions regarding an interview notification received;
2. Delivery of the Respondent's Submittal;
3. Discussion at the interview;
4. Delivery of written questions about the RFQ;
Review of background/contract documents at the staff offices;
5. Public Records Requests; and/or
6. Bid protest proceedings.

1.11 **Lobbyist Activities:** In accordance with School Board Policy 1100B, as currently enacted or as amended from time to time, persons acting as lobbyists must state, at the beginning of their presentation, letter, telephone call, e-mail or facsimile transmission to School Board Members, Superintendent or Members of Senior Management, the group, association, organization or business interest she/he is representing.

1.11.1 A lobbyist is defined as a person who, for immediate or subsequent compensation (e.g., monetary profit/personal gain), represents a public or private group, association, organization or business interest and engages in efforts to influence School Board Members on matters within their official jurisdiction.

1.11.2 A lobbyist is not considered to be a person representing school allied groups (e.g., PTA, DAC, Band Booster Associations, etc.) nor a public official acting in her/his official capacity.

- 1.11.3 Lobbyists shall annually (July 1) disclose in each instance and for each client prior to any lobbying activities, their identity and activities by completing the lobbyist statement form which can be obtained from official School Board Records, School Board Member's Offices or the Superintendent's Office and will be recorded on SBBC's website, www.browardschools.com.
- 1.11.4 The lobbyist must disclose any direct business association with any current elected or appointed official or employee of SBBC or any immediate family member of such elected or appointed official or employee of SBBC.
- 1.11.5 Senior-level employees and/or School Board Members are prohibited from lobbying activities for two (2) years after resignation or retirement or expiration of their term of office.
- 1.11.6 The Office of the Superintendent shall keep a current list of persons who have submitted the lobbyist statement form.
- 1.12 **Preparation Cost of Qualifications Statement:** CM is solely responsible for any and all costs associated with responding to this RFQ. SBBC will not reimburse any CM for any costs associated with the preparation and submittal of any Qualifications Statement, or for any travel and per diem costs that are incurred by any CM.
- 1.13 It is the sole responsibility of the CM to assure it has received the entire Qualifications Statement and any and all Addenda.
- 1.14 It is the sole responsibility of the CM to assure that its Qualifications Statement is time stamped in the Procurement and Warehousing Services Department on or before the date and time stated in Section 2.0.
- 1.15 No verbal or written information which is obtained other than by information in this document or by Addenda to this RFQ shall be binding on SBBC.
- 1.16 No submissions made after the Qualifications Statement opening, amending or supplementing the Qualifications Statement, will be considered.
- 1.17 **Certification Regarding Scrutinized Activities:** By submitting its bid, proposal or qualifications statement, the CM certifies that it is not participating in a boycott of Israel, it is not on the List of Scrutinized Companies that Boycott Israel; it is no on the List of Scrutinized Companies with Activities in Sudan; it is not on the List of Scrutinized Companies with Activities in the Iran Petroleum Energy Sector; and that it is not engaged in business operations in Cuba or Syria.

SECTION 2.0 CALENDAR

12/11/2019	Issuance of RFQ # - FY20-184
12/18/2019	Non-Mandatory Pre-Submittal Conference At 11:00 a.m. ET* at Procurement and Warehousing Services Department 7720 West Oakland Park Blvd., Suite 323, Sunrise, Florida 33351-6704 RSVP by sending the names and e-mail address of individuals that will be in attendance by 1:00 p.m. 12/17/2019 to: cfields@browardschools.com
TBD	Non-Mandatory Site Visits Package A: P.002143 - New Renaissance Middle School Package B: P.002148 – Monarch High School Package C: P.002141 – Lyons Creek Middle School Package D: P.001676 – Cresthaven Elementary School
1/3/2020	Written questions due (use RFI form): On or before 5:00 p.m. ET Procurement and Warehousing Services Department 7720 West Oakland Park Blvd., Suite 323, Sunrise, Florida 33351-6704 Or via email to: cfields@browardschools.com
1/14/2020	Qualifications Statements due: At or before 2:00 p.m. ET at Procurement and Warehousing Services Department. 7720 West Oakland Park Blvd., Suite 323, Sunrise, Florida 33351-6704
1/29/2020**	Part A – Shortlisting Meeting - Selection Committee reviews Qualifications and develops list of shortlisted firms: At 9:00 a.m. ET* at Procurement and Warehousing Services Department 7720 West Oakland Park Boulevard, Suite 323 Sunrise, Florida 33351-6704
Approximately 3 business days after Committee Review	Posting of Evaluation Committees Recommendation to shortlist.
2/11/2020**	Part B – Final Meeting - Selection Committee conducts interviews with shortlisted firms and makes a recommendation for Selection: At 9:00 a.m. ET* at Procurement and Warehousing Services Department 7720 West Oakland Park Boulevard, Suite 323 Sunrise, Florida 33351-6704

Approximately 5 business days
after Committee Review

Posting of Evaluation Committees Recommendation to negotiate.
Recommendation to award shall be posted after the completion of
negotiations.

TBD

Negotiation Meeting (**Time – TBD**)

At Procurement and Warehousing Services Department
7720 West Oakland Park Boulevard, Suite 323
Sunrise, Florida 33351-6704

April 2020

Tentative School Board Award Date.

*These are public meetings. SBBC prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation. Individuals who wish to file a discrimination and/or harassment complaint may call the Executive Director, Benefits & EEO Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

Individuals with disabilities requesting accommodations under the Americans with Disabilities Act (ADA) may call Equal Educational Opportunities (EEO) at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

****PART A** - The date of the Shortlisting Meeting to review and evaluate Qualifications Statement is approximate and may be changed via Addendum or Notice. Pursuant to the requirements of Section 287.055(4)(a), Florida Statutes, the District shall evaluate Qualification Statements regarding the proposed projects and shortlist **six (6)** Submitting Firms based on the approach, experience, and ability to furnish the required services presented in their Qualifications Statement. No additional handouts, paperwork, or presentations from Submitting Firms will be permitted. At the conclusion of this Shortlisting Meeting, QSEC shall evaluate and rank all firms. The top **six (6)** highest ranked firms shall be Shortlisted and proceed to the subsequent QSEC meeting for final evaluation, ranking, and selection. NOTE: This meeting schedule and assigned time slots are only estimates and are subject to change at the sole discretion of QSEC depending upon the progress of the meeting. Submitting Firms are strongly encouraged, but not required, to be physically present at the designated meeting site location for the entire meeting to be available for discussions and to attend the open and closing portions of the meeting.

*****PART B** - The date of the Final Meeting with Short List Firms is approximate and may be changed via Addendum or Notice. Pursuant to the requirements of Section 287.055(4)(a), Florida Statutes, the District shall evaluate Short List Firm Presentations regarding the proposed project, and shall conduct discussions with the Shortlisted Firms regarding Qualifications Statement and ability to furnish the required services. Shortlisted Firms will be notified via e-mail with interview instructions, including time, location, agenda, and timeframes. It is estimated that the Final Meeting will be comprised of each firm giving a 20-minute presentation to QSEC followed by Questions from the committee members. Accordingly, District staff shall establish a meeting schedule including specific randomly selected time slots for Short List Firm presentations to QSEC. No additional handouts or paperwork from Submitting Firms will be permitted. NOTE: This meeting schedule and assigned time slots are only estimates and are subject to change at the sole discretion of QSEC depending upon the progress of the meeting. Short List Firms are strongly encouraged, but not required, to be physically present at the designated meeting site location for the entire meeting to be available for presentations and to attend the open and closing portions of the meeting. **Failure of Short List Firms to be present for their scheduled presentation time slot shall result in disqualification of the Short List Firm and evaluation of the firm will not take place.**

SECTION 3.0 - RFQ CONDITIONS

- 3.1 **Evaluation Committees and Qualifications Statements:** SBBC complies with Sections 119.071 and 286.0113, Florida Statutes, in the review and award of contracts.
- 3.2 **Public Record:** Each CM acknowledges that all information contained within its Qualifications Statement is part of the public domain as defined by the State of Florida Sunshine and Public Record Laws and is not exempt from public inspection or copying.
- 3.3 **Governing Law:** This RFQ, and any award(s) resulting from it, shall be interpreted and construed in accordance with the laws of the State of Florida. Any protests arising from this RFQ shall be subject to Section 120.57(3), Florida Statutes. Any disputes or controversies arising out of a contract awarded under this RFQ shall be submitted to the jurisdiction of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida or to the United States District Court for the Southern District of Florida.
- 3.4 **Advertising:** By submitting a response to this RFQ, CM agrees not to use any award under this RFQ as a part of any commercial advertising without prior written approval of SBBC.
- 3.5 **Billing Instructions and Payment:** All payments made to the CM shall be made by ACH (Automated Clearing House). Monthly invoices shall be submitted to the Project Manager for review and approval. Refer to the Agreement for the specifics. The ACH Payment Agreement Form. This form shall be submitted by the awardee at the time of the execution of the Contract.
- 3.6 **Contract Value:** No guarantee is given or implied as to the total dollar value or work as a result of this RFQ. SBBC is not obligated to place any order for services performed as a result of this award. Order placement will be based upon the needs and in the best interest of SBBC.
- 3.7 **Conflict of Interest and Conflicting Employment or Contractual Relationship:** Section 112.313 (3) and (7), Florida Statutes, sets forth restrictions upon the ability of SBBC employees acting in a private capacity to rent, lease, or sell any realty, goods, or services to SBBC. It also places restrictions upon SBBC employees concerning outside employment or contractual relationships with any business entity which is doing business with SBBC. Each CM is to disclose any employees it has who are also SBBC employees. Refer to the Conflict of Interest Form. This executed document shall be submitted at the time of Contract Execution. Any employees identified by the CM should obtain legal advice as to their obligations and restrictions under Section 112.313 (3) and (7), Florida Statutes.
- 3.8 **Disputes:**
- 3.8.1 In the event of a conflict between the documents, the order of priority of the documents shall be as follows:
1. The Agreement resulting from the award of this RFQ (if applicable); then
 2. Addenda released for this RFQ, with the latest Addendum taking precedence; then
 3. the RFQ Documents; then
 4. Awardee's Qualifications Statement.
- 3.8.2 In case of any other doubt or difference of opinion, the decision of SBBC shall be put in writing and shall be final and binding on both parties.
- 3.9 **Insurance and Liability:** Refer to CMAR Agreement for Professional Insurance Requirements.
- 3.10 **Public Entity Crimes:** Section 287.133(2)(a), Florida Statutes, as currently enacted or as amended from time to time, states that 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 Qualifications Statement on a contract to provide any goods or services to a public entity, may not submit a Qualifications Statement on a contract with a public entity for the construction or repair of a public building or public work, may not submit a Qualifications Statement on leases of real property to a public entity, may not be awarded or perform work as a 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, Florida Statutes, for CATEGORY TWO [currently \$25,000] for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

3.11 **Supplier Diversity Outreach Program (SDOP) Guidelines and Standard Operating Procedures Information:**

SBBC has implemented School Board Policy 3330 Supplier Diversity Outreach Program. The provisions of the Policy shall apply to all competitive solicitations for construction, professional services, commodities and other contractual services, and any resulting contract documents including change orders, and amendments. **Refer to SDOP Guidelines.**

This RFQ includes participation goals for SBBC-certified M/WBEs. Refer to Section E and Section 5.0 Evaluation of Qualification – 5.2.3 Scoring of M/WBE Participation – Section E for additional information.

For information regarding M/WBE certification, or to obtain information on locating certified M/WBEs, contact Supplier Diversity Outreach Program (SDOP) at 754-321-0505 or visit BrowardSchools.com/SDOP.

3.11.1 **Nondiscrimination:**

Each CM hereby certifies and agrees that the following information is correct:

In preparing its response to this project, the CM has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in School Board Policy 3330 – Supplier Diversity Outreach Program, Section D.1.; to wit: discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for SBBC to reject the response submitted by the CM on this project, and terminate any contract awarded based on the response. As a condition of submitting a response to SBBC, the CM agrees to comply with SBBC's Commercial Nondiscrimination Policy as described under its School Board Policy 3330 – Supplier Diversity Outreach Program, Section D.1.

3.11.2 **Certification Application Instructions:**

To ensure that firms seeking to participate in the Supplier Diversity Outreach Program (SDOP) qualify as Small Business Enterprises (SBEs), or are at least fifty-one (51%) percent legitimately owned, operated and controlled by minorities and/or women, each such firm shall be required to be certified as to its Small/Minority/Women Business Enterprise (S/M/WBE) ownership status by the SDOP Office prior to the time of the proposal submission. A letter or certificate confirming the SDOP Office's approval of S/M/WBE certification status must be submitted on behalf of each S/M/WBE firm as part of the Qualifications Statement submission.

Important Points to Remember:

- (a) Please submit any S/M/WBE certification application with all supporting documentation well in advance of the time of proposal submission, as the application review and approval process typically takes up to sixty (60) days after receipt of the completed application.
- (b) Please contact the Supplier Diversity Outreach Program Office for the application or information on the certification requirements and process at (754) 321-0505 or email at sdopcertainment@browardschools.com.

DEFINITIONS

The following terms shall have the listed meanings (the definitions shall not apply outside of this section where inconsistent with those listed elsewhere in the Solicitation Documents).

Affirmative Procurement Initiative (API): refers to various SDOP tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation

preferences, subcontracting goals, and joint venture incentives. (For full descriptions of these and other SDOP tools, see, Section E of SBBC Policy No. 3330 and the SDOP Standard Operating Procedures.)

Consultant: An individual, firm, partnership, corporation or combination thereof submitting a proposal for the work as specified herein.

Subconsultant: A person or entity who has a direct contract with the prime Submitting Firm to perform a portion of the Work.

Minority and/or Women Business Enterprises (M/WBE or M/WBEs): a firm that is certified in accordance with SBBC Policy No. 3330 as either a minority business enterprise or as a women business enterprise and which is at least fifty-one percent (51%) owned, managed, and controlled by one or more minority group members and/or women, and that is ready, willing, and able to sell goods or services that are purchased by the School District.

Small Business Enterprises (SBE or SBEs): a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is certified in accordance with SBBC Policy No. 3330 as being independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories, and which annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry(ies) as established by the U.S. Small Business Administration, and meets the significant business presence requirements as defined SBBC. Policy No. 3330.

Significant Business Presence: to qualify for participation as an S/M/WBE firm in the SDOP policy, an S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the relevant marketplace, defined as: an established place of business in one or more of the three counties that make up the Southern Florida relevant marketplace, from which at least fifty percent (50%) of its full-time, part-time, and contract employees are domiciled and regularly based, and from which a substantial role in the S/M/WBE's performance of a commercially useful function is conducted. A location utilized solely as a post office box, mail drop or telephone message center, or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

3.12 **Protest of RFQ Conditions/Specifications:** Any person desiring to protest the conditions/specifications in this RFQ, or any Addenda subsequently released thereto, shall file a notice of intent to protest within seventy-two (72) hours after the posting, in writing to the Director of Procurement and Warehousing Services. Saturdays, Sundays, state holidays or days during which the school district administration is closed shall be excluded in the computation of the of the 72-hour time period. The formal written protest shall be filed within ten (10) calendar days after the date the notice of protest was filed. The formal written protest must be received on or before 5:00 p.m. EST of the tenth (10th) calendar day at the office of the Director of Procurement and Warehousing Services. If the tenth (10th) day in which to file a formal written protest falls on a Saturday, Sunday, state holiday or a day during which the school district administration is closed, the formal written protest must be filed the next business day. Refer to Section 120.57(3)(b), Florida Statutes, as currently enacted or as amended from time to time, for the requirements for the written protest.

3.12.1 Failure to file a notice of protest or to file a formal written protest within the time prescribed by Section 120.57(3), Florida Statutes, or a failure to post the bond or other security required by SBBC Policy 3320, Part VIII, within the time allowed for filing a bond, shall constitute a waiver of proceedings.

3.13.2 Notices of protests, formal written protests, and the bonds required by School Board Policy 3320, shall be filed at the office of the Director of Procurement and Warehousing Services, 7720 West Oakland Park Boulevard, Suite 323, Sunrise, Florida 33351. **Fax filing will not be acceptable for the filing of bonds.**

3.13 **Posting of RFQ Recommendations:** RFQ Recommendations will be posted on www.demandstar.com as noted on the Calendar (Section 2.0) or as modified by an addendum or by posting in the Procurement and Warehousing Services Department and at www.demandstar.com (under the document section for this RFQ). The Recommendations will remain posted for at least seventy-two (72) hours. It is the responsibility of each CM to ascertain any revised date for the posting of RFQ Recommendations.

- 3.14 **Protest of Intended Decision:** Any person desiring to protest the Recommended Decision shall file a notice of protest, in writing, within seventy-two (72) hours after the posting of the RFQ Recommendation and shall file a formal written protest within ten calendar days after the date the notice of protest was filed. The formal written protest must be received on or before 5:00 p.m. EST of the tenth (10) calendar day at the office of the Director of Procurement and Warehousing Services. Saturdays, Sundays, state holidays and days during which the school district administration is closed shall be excluded in the computation of the seventy-two (72) hours. If the tenth (10th) day in which to file a formal written protest falls on a Saturday, Sunday, state holiday, or a day during which the school district administration is closed, the formal written protest must be filed the next business day.
- 3.14.1 Failure to file a notice of protest or to file a formal written protest within the time prescribed by Section 120.57(3), Florida Statutes, or a failure to post the bond or other security required by School Board Policy 3320, Part VIII, within the time allowed for filing a bond, shall constitute a waiver of proceedings.
- 3.14.2 Notices of protests, formal written protests, and the bonds required by School Board Policy 3320, shall be filed at the office of the Director of Procurement and Warehousing Services, 7720 West Oakland Park Boulevard, Suite 323, Sunrise, Florida 33351. **Fax filing will not be acceptable for the filing of bonds.**
- 3.15 **Use of Other Contracts:** SBBC reserves the right to utilize any other SBBC contract, any State of Florida Contract, any contract awarded by any other city or county governmental agencies, other district school boards, other community college/state university system cooperative agreements, in lieu of any offer received or award made as a result of this RFQ if it is in SBBC's best interest to do so. SBBC also reserves the right to waive irregularities or technicalities in any Qualifications Statement received if such action is in the best interest of SBBC. However, such a waiver shall in no way modify the RFQ requirements or excuse the CM from full compliance with the RFQ specifications and other contract requirements if the CM is awarded a contract.
- 3.16 **Assignment:** Neither party to the Agreement shall sell, assign or sublet the same without the written consent of the other; nor shall a CM assign any monies due or to become due to the CM, or by reason of the Contract without SBBC's previous written consent and as approved by SBBC's Attorney.
- 3.17 **Cancellation:** In the event any of the provisions of this RFQ are violated by the awardee, the Director of Procurement and Warehousing Services shall give written notice to the awardee stating the violations and unless they are corrected within five (5) business days, a recommendation will be made to SBBC for cancellation.
- 3.18 **SBBC Photo Identification Badge**
Background Screening: Awardee agrees to comply with all of the applicable requirements of Sections 1012.32, 1012.465, 1012.467 and 1012.468, Florida Statutes, and that awardee and all its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. Personnel shall include employees, representatives, agents or sub-contractors performing duties under the contract to SBBC and who meet any or all of the three requirements identified above. Awardee will bear the cost of acquiring the background screening required under Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to awardee and its personnel. The parties agree that the failure of awardee to perform any of the duties described in this section shall constitute a material breach of this RFQ entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Awardee agrees to indemnify and hold harmless SBBC, its officers and employees of any liability in the form of physical or mental injury, death or property damage resulting from awardee's failure to comply with the requirements of this section or Sections 1012.32, 1012.465, 1012.467 or 1012.468, Florida Statutes.
- 3.18.1 SBBC issued identification badges must be worn at all times when the awardee's personnel or agents are on SBBC property and must be visible and easily readable.
- 3.18.2 Badge Vendor Information shall be provided to the CM at the time of Award.

3.19 **Withdrawal or Cancellation of RFQ:**

3.19.1 **Withdrawal:** In the best interest of SBBC, SBBC reserves the right to withdraw this RFQ at any time prior to the time and date specified for the Qualifications Statement opening.

3.19.2 **Cancellation:** In the best interest of SBBC, SBBC reserves the right to cancel this RFQ at any time prior to the award of a contract(s).

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

3.21 It is the sole responsibility of the CM to assure it has received the entire Qualifications Statement and any and all Addenda.

3.22 It is the sole responsibility of the CM to assure that its Qualifications Statement is time stamped in the Procurement and Warehousing Services Department on or before the due time on the date due. No submissions made after the Qualifications Statement opening, amending or supplementing the Qualifications Statement, shall be considered.

3.23 No verbal or written information which is obtained other than by information in this document or by Addenda to this RFQ shall be binding on SBBC.

3.24 **Acceptance and Rejection of Qualifications Statements:**

3.24.1 **Acceptance:** All responsive Qualifications Statements properly completed and submitted will be evaluated in accordance with Section 5.0.

3.24.2 **Rejection:** SBBC reserves the right to reject any and all Qualifications Statements. In addition, a Qualifications Statement may be rejected if it does not conform to the rules or the requirements contained in this RFQ. Examples for rejection include, but are not limited to, the following:

3.24.2.1 The Qualifications Statement is time-stamped at the Procurement and Warehousing Services Department after the deadline specified in the RFQ.

3.24.2.2 Each CM found legally guilty of collusion amongst CMs shall be rejected and the participants in such collusion shall be barred from future procurement opportunities until such time as they are reinstated by SBBC.

3.24.2.3 The Qualifications Statement shows non-compliance with applicable laws; or contains any unauthorized additions or deletions; is a conditional Qualifications Statement; is an incomplete Qualifications Statement; or contains irregularities of any kind.

3.24.2.4 The CM adds provisions reserving the right to accept or reject an award or to enter into a contract pursuant to an award or adds provisions contrary to those in the RFQ.

3.24.2.5 Failure to strictly comply with the Supplier Diversity Outreach Program, **SHALL result** in a recommendation to reject the Qualifications Statement.

3.24.3 SBBC also reserves the right to waive irregularities or technicalities in any Qualifications Statement received if such action is in the best interest of SBBC. However, such a waiver shall in no way modify the RFQ requirements or excuse the CM from full compliance with the RFQ specifications and other contract requirements if the CM is awarded the contract.

- 3.25 **Maintenance of Records:** An awardee shall keep all records and supporting documentation which concern or reflect its Services hereunder. The records and documentation shall be retained by the awardee for a period of seven (7) years from the completion date of the project associated with the Authorization to Proceed; or such period of time as required by law. SBBC or its duly authorized agents or representatives shall have the right to inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the period noted above in which the records are to be retained. Such activity shall be conducted at the reasonable convenience of the awardee.
- 3.26 **Liability:** Refer to Attachment C - Sample Construction Management at Risk Agreement.
- 3.27 **SBBC Information Security Guidelines:** It is the responsibility of the CM to read and adhere to the SBBC Information Security Guidelines when using any device connected to the SBBC's network. Following the conclusion of the contract term, all of SBBC's confidential information must be removed from the awardee's equipment and all access privileges must be revoked. Final payment will be withheld until the awardee has confirmed, in writing, that all of SBBC's confidential information has been purged from any and all electronic technology devices that were used during this contract and were connected to the SBBC's network.
- 3.28 **Site Visit:** Site visits may be requested by a Submitting Firm or its subconsultants through an RFI at any time prior to the due date of the qualifications statement. Upon receipt of request, district staff will review and coordinate with location personnel to select a date and time for a site visit (if available). Once confirmed, site visit date and time will be posted on DemandStar for all interested parties. Only one pre-evaluation site visit may be scheduled for each location within the procurement. Firms will be required to submit the names of personnel that will be attending the site visit. Participants will be allowed to photograph areas related to the RFQ scope of work. **Site visit participants cannot photograph any students.**
- 3.29 **Pre-qualification of Contractors:** In order for Qualifications Statements on this project to be accepted by SBBC, the CM must be Pre-Qualified in accordance with Section 1013.46, Florida Statutes, and State Requirements for Educational Facilities, Section 4.1(1) and School Board Policy 7003.1, at the time of the bid opening. Qualifications submitted by CMs not in compliance with these requirements shall not be considered.
- 3.29.1 **Minimum Pre-qualification Limit:** The CM must have a per-project Pre-Qualification limit exceeding the largest, single project cost of construction in the RFQ (See Sections 6.0, 7.0, 8.0, and 9.0).
- 3.29.2 **Statement of Maximum Dollar Value of Individual Project:** The maximum dollar value of each individual project that the CM will be permitted to have under contract with SBBC at any one time.
- 3.30 **Performance Qualifications:** The CM and each of its subconsultant(s) / team member(s) that have worked as a Prime for the SBBC must each have obtained an average score of no less than two (2.00) on all SBBC projects or which have been completed within the last five (5) years as presented in Form 5.60 – Performance Evaluation Contractor/Construction Manager at Risk. The most recent overall score for each project as of the RFQ due date will be utilized to determine the average score for the CM and its subconsultants / team member(s). If the CM or any of its subconsultant has an average score of less than a 2.00, the CM shall not be considered.
- 3.30.1 Performance evaluations will be provided to the Qualifications Selections Evaluation Committee (QSEC) for review and use during the evaluation and scoring process in Part One (1) and Part Two (2).
- 3.31 **Deductions:** The CM must strictly comply with the submission requirements of this RFQ in its entirety. Firms that do not strictly comply with each section's requirements will receive a one (1) point deduction for EACH technicality or irregularity. All applicable deductions shall reduce the CM's final score.

SECTION 4.0 - REQUIRED QUALIFICATIONS FORMAT AND RESPONSE INFORMATION

- 4.1 SBBC's Procurement and Warehousing Services Department staff shall determine whether each CM has addressed and provided all RFQ submittal requirements. SBBC's Procurement and Warehousing Department shall identify the status of completion for each CM's Qualifications Statement on a spreadsheet for the Evaluation Committee's use.
- 4.2 It is required that Qualifications Statements be organized in the manner specified below and with all the information as identified. **Qualifications Statements should be submitted using Times New Roman, no less than 10 Point Font.**

4.2.1 **Title Page**

- Line 1 Include RFQ number and name;
Line 2 The RFQ Due Date;
Line 3 The name of the Submitting Firm (company/firm name);
Line 4 Company/firm address;
Line 5 Company/firm telephone number.

4.2.2 **Section A – General**

NOTE: Failure to strictly comply with this section may result in a recommendation to reject the Qualifications Statement.

Section A1 Table of Contents

Include a clear identification of the material by scoring sections with section number and by page number. The Qualifications Statement page numbers should correspond to the page numbers in the Table of Contents. The Sections of the Qualifications Statement should correspond with the Sections in 4.2 of the RFQ.

Section A2 Letter of Responsibility

Include the names of the persons who will be authorized to make decisions for the CM for this Qualifications Statement, and for the CM efforts that may result from this RFQ. Provide titles, work addresses, telephone numbers, and e-mail addresses for each authorized decision-maker. The Letter of Responsibility is to be submitted on the CM's letterhead and signed by an Officer of the CM's company. (One (1) page maximum)

Section A3 Signed Addenda

Include signed and dated copies of **the first page of all addenda** to verify and acknowledge receipt. All pages to each addendum do not need to be submitted.

4.2.3 **Section B – Required Forms, Licenses, Certificates, History**

NOTE:

Failure to strictly comply with Sections B1 thru B4 may result in a recommendation to reject the Qualifications Statement.

Section B1 Required Response Form

Modifications or alterations to this form shall not be accepted and will cause the Qualifications Statement to be rejected and not reviewed. The Required Response Form, shall be the only acceptable form. The Required Response Form shall be completed in ink or typewritten. The signed "original" Required Response Form shall be submitted within the Qualifications Statement Package labeled as the "original." **Failure to include the Required Response Form and/or failure to sign the Required Response Form with in the Qualification Statement labeled as the "original" SHALL result in the rejection of the CM's Qualification Statement.** Refer to Attachment E.

JOINT VENTURES

The Required Response Form for Joint Venture Qualifications Statements shall follow the following requirements. In the event multiple business entities submit a joint Qualifications Statement as a joint venture in response to the RFQ, such joint venture shall comply in all respects with the requirements of Rule 61G6-5.011, Florida F.A.C. The joint venture shall designate a single, prequalified CM to be the "Prime Firm". The Prime Firm shall prepare and submit a list of the names and addresses of all business entities of the Joint Venture Qualifications Statement. The Prime Firm shall provide all bonding and insurance requirements, execute any and all Contract Documents, complete the Required Response Form shown herein, and have overall and complete authority to resolve any dispute which may arise from work associated with this contract.

Only a single contract with one CM shall be acceptable. Prime Firm responsibilities shall include, but not be limited to, performing of overall contract administration, preside over other business entities participating or present at SBBC meetings, oversee preparation of reports and presentations, and file any notice of protest and final protest as described herein. The Prime Firm shall also prepare and present a consolidated invoice(s) for services performed.

The SBBC shall issue only one (1) check for each consolidated invoice to the Prime Firm for services performed. The Prime Firm shall remain responsible for performing services associated with response to this RFQ. Each participant in the joint venture must sign a statement of authority (as set out in Rule 61G4-15.002, F.A.C.) giving the licensed contractor full authority to conduct the contracting business of the participant. A copy of the executed joint venture agreement and statements of authority must be submitted together with qualifications statement. If the joint venture is awarded the contract, the licensed contractor must qualify the joint venture within ninety (90) days of award. If the joint venture is a limited partnership, the qualifying business organization or individual must be a general partner of the joint venture.

Section B2 Licenses and Registrations (Florida)

All appropriate licensing numbers shall be provided on a list and include expiration dates. This list to include type of license or registration license number and name of license holder. Examples include:

1. **State of Florida Department of State Division of Corporations filing (Sunbiz.org) for the firm and the Submitting Firm's Fictitious Name filing (d/b/a registration), if applicable**
2. All appropriate licenses **on a list** and include **expiration dates**
3. Firms Construction Licenses and Registrations for the CM and Subconsultants
4. General Contracting License(s)
5. S/M/WBE Certificate (as applicable) – **for Submitting Firm**
6. Continue as appropriate

Section B3 Submitting Firm History

Provide a listing of current and former business entities that the CM is operating under and has operated under in the past. The letter must be on the CM's company letterhead and signed by an officer of the CM's company.

Section B4 Litigation

Provide a list of any legal or regulatory action within the last three (3) years in which the CM is a named party. For all applicable legal or regulatory actions, identify the court or agency in or before which the action was instituted, the applicable case or file number, and the current status or disposition for such reported action. If the CM is not a party to any legal or regulatory action, provide a statement to that effect. For joint venture or team CMs, submit the information requested above for each member of the joint venture or team.

As part of its response, the CM shall provide SBBC with a list of all instances within the immediate past three (3) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Florida that CM discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.

NOTES:

Section C1 "Current workload w/ SBBC" and Section C3 shall be verified, evaluated, and scored by District Staff (not QSEC).

All other portions of Section C and all of Section D below shall be evaluated and scored by QSEC.

The Qualifications Statement may not contain a reference to fees or construction costs.

4.2.4 **Section C – Experience and Qualifications (Fifty-five (55) maximum combined total points for C1, C2 and C3)**

Section C1 **Executive Summary / Approach / Current Work Load** (Twenty-five (25) Points Maximum)

Executive Summary – (Five (5) Points Maximum) Submit a brief abstract stating the CM's understanding of the nature and scope of the services to be provided and capability to comply with all terms and conditions of this RFQ (Four (4) page maximum).

Approach – (Ten (10) Points Maximum) Discuss your approach for delivering each project, both in the preconstruction and construction phases. Discuss your firm's willingness and ability to meet the project's schedule and budget. Discuss the office location from which this work will be conducted and its distance from each school. (Eight (8) page maximum).

Current Work Load Overall – (Seven (7) Points Maximum) Demonstrate your ability to perform this work given your current project workload. Provide a list of current projects for all clients including SBBC. Include all projects currently under contract and all projects where your firm has been selected but is not yet under contract. Include project construction value, major scope items, delivery method, percent (%) completion, whether the project is bonded and if so, name of bonding company. **Provide the above information for your subconsultant(s)/team.** (Five (5) page maximum).

Current Work Load w/ SBBC - (Three (3) Points Maximum) District Staff shall review each Submitting Firm's current, SMART Program workload and determine the total budgeted cost ("TBC") associated with such workload. Each Submitting Firm's workload shall be calculated to include the budgeted costs associated with each project on which the Submitting Firm was awarded a contract and/or where the Submitting Firm was determined to be the highest ranked Submitting Firm. Budgeted costs of SMART Program projects shall be those costs set forth in the Approved District Educational Facilities Plan at the time Qualifications Statements are due. Submitting Firm provides its SBBC projects in Current Work Load Overall section. No Submission is required by Submitting Firms for Current Work Load w/ SBBC.

Scoring: Scoring shall be a ratio of the TBC of SBBC projects for which a specific Submitting Firm was either awarded a contract or where the Submitting Firm was determined to be the highest ranked Submitting Firm, to the largest individual TBC amongst all Submitting Firms. This ratio will be proportionately scored from zero (0) to three (3) points, with zero (0) points awarded to the Submitting Firm with the largest TBC on SBBC projects, and three (3) points awarded to Submitting Firms with the least TBC on SBBC projects.

Section C2 **Firm Experience and Qualifications** (Fifteen (15) Points Maximum)

Provide a statement of your firm's qualifications to perform the services requested under this RFQ. (Three (3) page maximum).

Section C3 Relevant Projects / References (Fifteen (15) Points Maximum)

Relevant Projects and References for projects completed more than five (5) years ago shall be scored as zero (0) points. If a project is incomplete, the project may receive a reference score based on the criteria stated in the reference section, but the project will not receive a relevancy score. A complete project is a project that has received a Certificate of Occupancy (CO). For Florida School Projects, the project must have an executed OEF 110B Form. Attach the CO for each Relevant Project. Neither the Project Relevancy/Reference Form nor the CO count towards page limits. (Four (4) page maximum)

Relevant Projects (Three and One Half (3.5) Points Maximum per project) – Provide a list and description of **three (3)** projects of similar type and scope to this solicitation, which have been successfully completed within the past five (5) years (“Relevant Projects”). **Only projects in the United States of America will be considered for evaluation and scoring.** Indicate if your firm was a subcontractor or subconsultant on each project and include the detailed scope of work provided as a subcontractor or subconsultant. The Relevant Projects/Reference Form advertised with this RFQ must be utilized in submitting the firms. For each Relevant Project, include:

- Name and location of Relevant Project**;
- Summary of the Relevant Project’s scope, including construction delivery method**;
- Detailed scope of work that was performed by your firm;
- Original estimated Cost of Construction**;
- Final Construction Cost**;
- Planned versus actual construction schedule in days**;
- Planned versus actual completed date (Month/Year of Certificate of Occupancy)**;
- S/M/WBE Percentage Goals vs Actual percentages**, and
- Name, title, and contact information of client/Relevant Project Owner** (“Reference”).

** Indicates items that are requested in the Relevant Projects/Reference Form. **This information does not need to be replicated once included in the form. If an item on the Relevant Projects/Reference Form is not applicable, indicate with “N/A”.**

To Calculate Item A in the *Relevancy of Project and Scope* section of the Project Relevancy/Reference Form, the applicable Project’s Final Construction Values will be compared to the RFQ Budget for this RFQ. For packages and multiple school procurements, the applicable Project’s Final Construction Budget will be compared to the lowest school’s RFQ Project Budget.

References (One and One Half (1.5) Points Maximum per project) - Provide References for the three (3) Relevant Projects utilizing Attachment K, Project Relevancy/Reference Form. Relevant Project References may be contacted by District staff on subsequent procurements for a period of up to one (1) year. The Submitting Firm shall continue submitting the Project Relevancy/Reference Form listing its three Relevant Projects on subsequent procurements. The Submitting Firm shall identify repeated References as “Reuse” in the designated area of the form. School District staff shall attempt to personally contact References no more than three (3) times. If a Reference is unable to be personally contacted or otherwise fails to respond to District staff, then such Reference shall be scored as zero (“0”) points. References for incomplete projects who respond will be scored as appropriate.

4.2.5 **Section D – Team Composition: (Twenty-Five (25) maximum combined total points for sections D1 and D2)**

Section D1 Team Structure (Ten (10) Points Maximum)

Describe the structure of your team, including all subconsultants. Description should include relationship of team members, past experience working with each other, and the availability of team members to successfully

complete the project. Indicate which preconstruction services the prime firm offers with in house staff, and indicate which preconstruction services the firm may opt to utilize consultants. (Three (3) pages maximum).

Section D2 **Key Personnel** (Fifteen (15) Points Maximum)

Provide the names of the CM's Management Staff intended for use on this Project. Identify the Company Officer to be in charge of this Project. Identify the intended Project Manager, Construction Manager, the primary site Superintendent and any other key staff member and team members. Include and Organizational Chart. Resumes for key personnel should be provided.

NOTE: Section E below shall be evaluated and scored by District Staff (not QSEC).

4.2.6 **Section E – Supplier Diversity Outreach Program** (Twenty (20) Points Maximum)

Submitting Firm shall review the Supplier Diversity Outreach Guidelines (**Attachment A**) attached to this RFQ.

Each Submitting Firm shall submit its intended or planned subconsultant(s) for this project as applicable and in the format as required per this RFQ. Explain your process for pursuing your M/WBE subcontractor commitment during the construction phase without incurring additional project costs.

INDUSTRY-SPECIFIC REMEDIAL AFFIRMATIVE PROCUREMENT INITIATIVES

The Goal Setting Committee (GSC) has considered the following in the course of reaching a determination regarding which, if any, SBE or M/WBE industry-specific remedial programs shall be applied to this RFQ and resulting contract:

- a. Whether the most recent data on M/WBE utilization in the absence of race-conscious APIs indicate that construction contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
- b. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors based upon past contract award and payment data;
- c. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in construction contracts; and
- d. The experiences of other jurisdictions within the District's relevant marketplace for construction services.

Accordingly, the GSC has applied the terms and conditions of the following Industry-Specific Remedial Affirmative Procurement Initiatives to this RFQ and the resulting contract:

INSTRUCTIONS TO SUBMITTING FIRMS

1. In accordance with SBBC Policy No. 3330, Section E.2.e., the GSC has established the following Evaluation Preferences in the scoring of proposals submitted in response to this Construction Management at Risk RFQ. M/WBE and Non-M/WBE CM firms may respond as a team to collectively fulfill the responsibilities of the Construction Manager. CM Firms responding to this solicitation as a team must submit a completed Statement of Intent for M/WBE Construction Manager Participation (Attachment A.5). Individual respondents that are not submitting as a team will not be eligible to receive evaluation points for M/WBE CM participation as indicated in Section 5.2.3.

2. All respondents must complete Attachment B.1, Bidder/Proposer Assurance Statement (Document 00471), to commit during the construction phase, signed by the Submitting Firm. Failure to submit Document 00471 will render the submittal non-responsive to the M/WBE requirements.

4.2.6.1 Section E1 Combined Prime and M/WBE CM Team (Fifteen (15) Points Maximum)

In the selection process for the award of this construction manager at risk services contract, the percentage of combined prime and sub-consultant M/WBE participation proposed on its team by the consultant shall be considered by the QSEC in awarding up to fifteen (15) out of twenty (20) total M/WBE Evaluation Preference Points, and out of a total of hundred (100) overall available evaluation points. The fifteen (15) M/WBE Evaluation Preference points shall be awarded on a pro rata basis for each ten percent (10%) increment of CMAR contract participation that M/WBE firms are committed to perform under the proposal and contract (e.g., zero (0) M/WBE evaluation preference points are awarded for M/WBE combined prime and sub-consultant participation that is less than ten percent (10%) of the total proposal price or value; apportioned M/WBE evaluation preference points are awarded for M/WBE combined prime and subconsultant participation that is at least ten percent (10%), but less than twenty percent (20%), of the total proposal price; and all fifteen (15) M/WBE combined prime and subconsultant Evaluation Preference points are awarded for M/WBE participation that is equal to hundred (100%) of the total proposal price). Moreover, any M/WBE prime Submitting Firm that is awarded a contract pursuant to this Affirmative Procurement Initiative may not subcontract more than forty-nine percent (49%) of the full contract value to non-M/WBE subconsultants.

4.2.6.2 Section E2 Past Performance of M/WBE Inclusion (Five (5) Points Maximum)

As part of its application of the "Minority Inclusion Language in RFQs" API to this RFQ, the GSC has determined that up to five (5) out of the twenty (20) M/WBE Evaluation Preference points (and out of the total one hundred (100) overall evaluation points) allocated to this solicitation shall be awarded based upon the strength of the consultant's past performance and track record over the most recent three-year period in achieving or exceeding economic inclusion requirements (including, but not limited to, M/WBE subcontracting goals applied during hard bid solicitations or the Invitation to Bid Phase established by the project's owners). This track record shall include public sector and private sector contracts for the Submitting Firm's past projects and shall be taken into consideration by the evaluation panel in awarding up to five (5) out of twenty (20) M/WBE Evaluation Preference Points, and out of the total one hundred (100) evaluation points.

The Submitting Firm shall submit in its proposal adequate contact information for prior clients and customer references to enable the evaluation panel to verify the Submitting Firm's claimed achievements in this regard. The required information is shown in the table below. Submit this information on a separate page.

Project Name / Number	Customer / Owner	Owner's Contact Name /Phone #	Email	Assigned M/WBE Participation Goal	% M/WBE Participation Achieved	Cumulative Dollars Paid to M/WBEs

The full scoring matrix for assignment of M/WBE Evaluation Preference points for CMAR M/WBE team participation is located in Section 5.2.3 of this RFQ.

4.2.6.3 SDOP Goals

As a condition of being awarded the contract for this CMAR RFQ, the Submitting Firm agrees and commits to using its best efforts to achieve or fully satisfy all the requirements for each Affirmative Procurement Initiative that has been applied by the GSC to this contract. Such compliance is understood to be a material term of the CMAR contract, and shall include, but not be limited to, the CMAR consultant's responsibility to ensure compliance with M/WBE Subcontracting Goals or M/WBE Segmented Subcontracting Goals that the GSC applies during the GMP phase for various construction trade contracts to be awarded and/or managed by the selected CMAR consultant.

Minority and/or Women-Owned Business Enterprise (M/WBE) Segmented Subcontracting Program:

M/WBE Segmented Subcontracting Goals:

In accordance with SBBC Policy No. 3330, Section E.2.c., the GSC has established segmented M/WBE goals for this Construction Manager at Risk Contract in accordance with SBBC Policy No. 3330, Section E.2.c. based upon relative M/WBE availability data collected by the SBBC through its Centralized Bidder Registration system and from other jurisdictions within its three-county relevant marketplace for construction contracts, and the SBBC's utilization of M/WBEs for similar contracts. Such segmented goals are specifically targeting the participation of particular segments of business enterprises owned and controlled by WBEs or certain minority group members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and minority group member categories of M/WBEs. The application of segmented M/WBE goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

For this RFQ and the resultant contract, the following terms and conditions shall apply:

Contract awards made by the selected CMAR consultant during the GMP Preparation Phase of this construction project shall be made to the most qualified, responsive, responsible bidder or Submitting Firm that commits to subcontracting **at least twenty-nine percent (29%) of the Total GMP** to be performed by M/WBE subcontractors. Moreover, out of this goal, **eight percent (8%)** subcontractor participation shall be performed by SBBC Certified African Americans businesses, and **eight percent (8%)** Women-Owned businesses. Such contract award shall be contingent upon a commercially useful function being assigned by the Submitting Firm to the M/WBE subcontractors. **M/WBE Second (2nd) Tier SBBC - Certified Subcontractors are counted towards the overall goal.**

Such contract award is contingent upon a commercially useful function being assigned by the Submitting Firm to the certified M/WBE sub-consultants/contractors. Any bid submitted at the GMP Phase with an inadequate commitment for M/WBE subcontract participation must provide sufficient documentation of good faith efforts to satisfy the M/WBE Segmented Subcontracting Goal.

Submission of Subcontractor Utilization Plan

Identify all M/WBE (if any) firms which will be utilized as Subcontractors in this Procurement. Subcontractor also refers to Subconsultants and team members that are utilized during the course of this procurement. The CM must provide SBBC M/WBE certificates for each firm to be utilized as a prime or subcontractor. Each M/WBE subcontractor and prime shall be listed in the Subcontractor Utilization Plan (as defined below) and submitted together with the proposal. The listing of M/WBEs in the Subcontractor Utilization Plan shall constitute the CM's representation to SBBC that the certified firms are technically and financially qualified and available to perform the assigned work. **Failure to provide complete and accurate information shall result in the proposal being deemed non-responsive to the M/WBE Requirements.**

The Subcontractor Utilization Plan, consisting of the following documentation, must be attached to the qualifications statement, if the document applies:

1. **Attachment A.1**, S/M/WBE Subcontractor Participation Schedule (Document 00475), signed by the Submitting Firm.
2. **Attachment A.2**, Statement of Intent to Perform as an S/M/WBE Subcontractor Form for each M/WBE firm (Document 00470), signed by each Subconsultant/Subcontractor that has been selected for the project.
3. **Attachment A.4**, S/M/WBE Good Faith Effort (Document 00480), must be submitted by the Submitting Firm if the assigned subcontracting goals is not met.
4. **Attachment A.5**, Statement of Intent for M/WBE Construction Manager Participation (Document 00477), signed by the Submitting Firms that intend to form a Prime Firm Team for this project.
5. **Attachment B.1**, Bidder/Proposer Assurance Statement, (Document 00471), to commit during the construction phase, signed by the Submitting Firm.

Should there be any discrepancy between percentages indicated in Attachments A.1 and A.2, the percentages indicated in Attachment A.2 shall be used to determine participation. If Attachment A.2 is not signed by the Subcontractor, participation attributed to the listed vendor **will not be included even if they are listed on A.1**. If no percentage is listed, the Submitting Firm will not receive points. If a percentage range instead of fixed percentage is provided for a particular Subcontractor on the Statement of Intent to Perform as a S/M/WBE Subcontractor Form, the highest percentage in the range will be used to calculate participation, thereby effectively representing the Submitting Firm's commitment to the contract goal.

Good Faith Effort

If the Submitting Firm, after a good faith effort, cannot meet the MWBE participation requirements from eligible, SBBC-certified Minority/Women Business Enterprise (M/WBE) subcontractors, the Submitting Firm shall submit a fully completed and executed **M/WBE Good Faith Effort Form** with its draft GMP prior to approval. See the Supplier Diversity Outreach Program Guidelines for more information.

Please review Section E.2.d. of Policy 3330 at <http://www.browardschools.com/SDOP>, or call the Supplier Diversity Outreach Program Office at 754-321-0505.

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SECTION 5.0 - EVALUATION OF QUALIFICATIONS

- 5.1 **Evaluation of Firms – This procurement will be performed in a two-step process.** Part A will be the submittal of a Statement of Qualifications which will be evaluated by the District and QSEC. Following evaluation of Part A, a short list of **six (6)** firms, comprised of the top ranking firms from Part A, shall be invited back to a second QSEC meeting where the firm will make a presentation to QSEC based on the firm's approach, experience, and team composition. The shortlisted firms will be evaluated under Part B independent of Part A.

PART A - Evaluation of Qualifications - Qualified Qualifications Statements shall be evaluated by the following Categories.

<u>SECTION</u>	<u>POSSIBLE POINTS</u>	<u>EVALUATOR</u>
Section A – General	Pass/Fail	District Staff
Section B – Required Forms	Pass/Fail	District Staff
<u>Section C – Experience and Qualifications</u>		
Section C1		
• Executive Summary	0 to 5	QSEC
• Approach	0 to 10	QSEC
• Current Work Load Overall	0 to 7	QSEC
• Current Work Load w/ SBBC	0 to 3	District Staff
Section C2 – Submitting Firm Experience and Qualifications	0 to 15	QSEC
Section C3 – Relevant Projects / References	0 to 15	District Staff
<u>Section D – Team Composition</u>		
Section D1 – Team Structure	0 to 10	QSEC
Section D2 – Key Personnel	0 to 15	QSEC
<u>Section E – Supplier Diversity & Outreach Program</u>		
Section E1 – Combined Prime and M/WBE CM Team	0 to 15	District Staff
Section E2 – Past Performance of M/WBE Inclusion	0 to 5	District Staff

TOTAL POSSIBLE POINTS PART A - 100

PART B - Evaluation of Interviews – Shortlisted Firms will make a presentation to QSEC, which shall be evaluated by the following Categories.

<u>SECTION</u>	<u>POSSIBLE POINTS</u>	<u>EVALUATOR</u>
Section AA – Approach to the project and demonstrated ability to meet the schedule		
• Approach to pre-construction	0 to 6	QSEC
• Approach to construction	0 to 8	QSEC
• Ability to meet schedule	0 to 8	QSEC
• Availability of resources	0 to 7	QSEC
Section BB – Key Personnel	0 to 11	QSEC

TOTAL POSSIBLE POINTS PART B - 40

Part B is scored independent of Part A with the Top Ranked Short List Firm from Part B recommended for award of the project.

5.2 **Initial Screening:** School District staff will review factors for each Qualification Statement on the Qualification Statements Evaluation Checklist Form.

5.2.1 **Responsiveness:** Submitting Firms' Qualifications Statements shall be evaluated by District staff to determine whether each Submitting Firm is responsive and responsible. Submitting Firms determined by District staff to be non-responsive or non-responsible shall be notified of such determination in advance of the applicable QSEC meeting. Staff shall present its recommendation to find applicable Submitting Firm(s) non-responsive or non-responsible to QSEC for consideration at the QSEC meeting. Staff shall present its recommendation of waivers and technicalities found in Submitting Firms' Qualifications Statements (when applicable) to QSEC for consideration at the beginning of QSEC meeting. Should the recommendation of waivers and technicalities for a Submitting Firm(s) not be accepted by QSEC, the applicable Submitting Firm(s) will be deemed non-responsive and discussions with the Submitting Firm(s) will not take place. QSEC will recommend to SBBC, that SBBC reject the applicable Submitting Firm(s) Qualifications Statement.

5.2.2 **Initial Scoring:** Sections C1 Current Work Load with SBBC, C3 Relevant Projects / References, and E Supplier Diversity Outreach Program will be scored by District staff, not by QSEC, and such scores shall be provided to QSEC on the day of the meeting after QSEC members have completed their individual scoring.

5.2.3 **Scoring of M/WBE Participation – Section E**

The SBBC shall award a maximum of fifteen (15) points out of twenty (20) for Combined Prime and M/WBE CM Participation as listed in the Evaluation Point Tables below. At the time the Qualifications Statement is submitted, the Submitting Firm shall identify all SBBC-certified M/WBE CM firms (if any) which will be utilized by completing Attachment A.1, S/M/WBE Subcontractor Participation Schedule (Document 00475) and Attachment A.2, Statement of Intent to Perform as an S/M/WBE Subcontractor (Document 00470). If the Submitting Firm forms a team, the Statement of Intent for M/WBE CM Participation must be signed by both Submitting Firms; see Attachment A.5 (Document 00477).

<u>Combined Prime and M/WBE CM Team Percentage of Total CMAR Contract Value</u>	<u>Assigned # of M/WBE Preference Points</u>
0% – 9%	0
10% – 19%	2.5
20% – 29%	5
30% – 39%	10
40% – 49%	15

Scoring of proposals for the award of these five (5) M/WBE evaluation points shall be as follows:

For each Submitting Firm, the M/WBE compliance percentage shall be calculated by taking the total number of projects from the last three years with assigned M/WBE project goals wherein that Submitting Firm has met or exceeded the assigned M/WBE project goal, and then dividing that number by the total number of projects with assigned M/WBE project goals that were performed by that Submitting Firm. (Those contracts and projects wherein no M/WBE participation goals were assigned will be excluded from the M/WBE compliance percentage analysis.) Submitting Firms will then be scored and awarded M/WBE evaluation preference points based upon their M/WBE compliance percentage calculations as follows:

- Five (5) points shall be awarded to Submitting Firm that have an M/WBE compliance percentage that is equal to ninety percent (90%) or greater;
- Four (4) points shall be awarded to Submitting Firm that have an M/WBE compliance percentage that is equal to, or greater than, eighty percent (80%), but is less than ninety percent (90%);

- Three (3) points shall be awarded to Submitting Firm that have an M/WBE compliance percentage that is equal to, or greater than, seventy percent (70%), but is less than eighty percent (80%);
- Two (2) points shall be awarded to Submitting Firm that have an M/WBE compliance percentage that is equal to, or greater than, sixty percent (60%), but is less than seventy percent (70%); and
- One (1) point shall be awarded to Submitting Firm that have an M/WBE compliance percentage that is equal to, or greater than, fifty percent (50%), but is less than sixty percent (60%).
- All other Submitting Firm shall be awarded zero (0) points.

Table below is how the past performance of MWBE inclusion is counted:

<u>Past Performance of M/WBE Inclusion</u>	<u>Assigned # of M/WBE Preference Points</u>
Unsatisfactory	0
Below Average (Poor) \leq 50 %	1
Meets expected Goals	3
Exceeded Goals	5

A successful performance that exceeds the expected goal shall be awarded Five (5) points. Performance that meets the expected goal shall be scored at Three (3) points. Poor performance that attains less than 50% of the expected goal shall be awarded One (1) point. A total complete failure in achieving any M/WBE participation goal shall earn zero (0) points.

NOTE: Points for Category E shall be provided by the Supplier Diversity Outreach Program Staff for use by QSEC members.

5.3 **Evaluation Scoring – Part A:** QSEC members shall review the RFQ responses in order to rank the Submitting Firms. QSEC members shall be provided with the *Qualification Selection Evaluation Committee RFQ Scoring Rubric* attached to this solicitation to provide guidance during the evaluation of qualification statements. Each QSEC member shall complete a Final Evaluation Form – Part A and score independently. The highest and lowest scores given by a QSEC Member for each Submitting Firm shall be omitted and the remaining scores shall be averaged for each Submitting Firm.

Evaluation Scoring – Part B: Shortlisted firms shall give a 20 minute presentation to QSEC members which will be followed with a Question and Answer period. QSEC shall rank the Firms based on scoring of presentations. Each QSEC member shall complete a Part B Evaluation Form and score independently. The highest and lowest of the committee's scores for each Submitting Firm shall be dropped, and an average shall be taken of the remaining scores per Submitting Firm. The Presentation shall be provided via PowerPoint with twelve (12) hard copies provided as "leave behinds". No other hand-outs, display boards, models or any other props are to be utilized or even brought into the presentation. The presentation may not contain a reference to fees or construction costs.

5.3.1 **Scoring of Approach - Section AA** (Twenty-nine (29) Points Maximum) Discuss your firm's qualifications and approach for delivering this project and your firm's M/WBE commitment. Scoring of the approach will weigh greatly on a firm's ability to deliver a quality project within or ahead of the schedule provided in Section 6 of this Request for Qualifications. Discussion should include measures that will be taken to insure the firm will maintain an established construction schedule.

- Approach to pre-construction – Six (6) Points Maximum
- Approach to construction – Eight (8) Points Maximum
- Ability to meet schedule – Eight (8) Points Maximum
- Availability of resources – Seven (7) Points Maximum

- 5.3.2 **Scoring of Key Personnel – Section BB** (Eleven (11) Points Maximum) Discuss the key personnel, including both the CM professional staff and consultants' staff.
- 5.4 **Submitting Firm Ranking and Tie-breakers:** Responsive and responsible Submitting Firms shall be ranked based on the total of: a) the points received from the initial screening completed by conducted by District staff, and b) the QSEC's averaged final evaluation Part A. The Submitting Firms receiving the most combined points shall be considered to be the **most qualified** Submitting Firm ("**Firm 1**"). All remaining Submitting Firms shall be ranked in descending order based on total combined points received (**Firm 2, Firm 3, Firm 4**, and etc.). A Short List of **six (6)** firms, comprised of the Top Ranked Firms in Part A shall be invited back to a second QSEC where they will make presentations.
- Part B:** The Shortlisted Firms shall be ranked based on QSEC's averaged final evaluation scores for Part B. The Submitting Firm receiving the most combined points in Part B shall be considered to be the **most qualified** Submitting Firm ("**Firm 1**"). All remaining Submitting Firms shall be ranked in descending order based on total combined points received (**Firm 2 and Firm 3**).
- 5.4.1 The first tie-breaker between identically scored Submitting Firms shall be the total number of times the applicable Submitting Firms are ranked as the **most qualified** ("**Firm 1**") by individual QSEC committee members.
- 5.4.2 The second tie-breaker between identically scored Submitting Firms shall be the total number of times the applicable Submitting Firms are ranked as the **second most qualified** ("**Firm 2**") by individual QSEC committee members.
- 5.4.3 The third tie-breaker between identically scored Submitting Firms shall be the total number of times the applicable Submitting Firms are ranked as the **third most qualified** ("**Firm 3**") by individual QSEC committee members.
- 5.4.4 The fourth tie-breaker shall be a coin flip, to be called in the air, by the tied Firm that held its discussions with QSEC first.
- 5.5 After scoring has been completed, QSEC shall recommend that:
- 5.5.1 District staff negotiate a contract for preconstruction services with Firm 1 at compensation which staff determines is fair, competitive, and reasonable. CM Fees that will be applicable during the construction phase of the project shall also be part of the negotiations prior to initial award.
- 5.5.2 Should staff be unable to negotiate a satisfactory contract with Firm 1, negotiations with Firm 1 shall be formally terminated.
- 5.5.3 Staff shall then undertake negotiations with Firm 2. Should staff be unable to negotiate a satisfactory contract with Firm 2, staff shall formally terminate negotiations with Firm 2, and then undertake negotiations with Firm 3.
- 5.5.4 This process shall continue with the remaining, most qualified firms until a satisfactory contract is negotiated. If no negotiations are successful, the procurement shall automatically terminate.
- 5.6 After successful negotiations with the applicable Submitting Firm, an Agreement shall be submitted to the Board for approval and award.
- 5.7 **Award:** The Agreements resulting from these negotiations shall be governed by the laws of the State of Florida, and shall have venue established in the Circuit Court of the 17th Judicial Court in and for Broward County, Florida, or the United States District Court of the Southern District of Florida.

END OF EVALUATION OF QUALIFICATIONS

SECTION 6.0 – PROJECT SCOPE AND SCHEDULE

6.1 **Summary Project Scope** - The Scope of Work is summarized below.

Package A: P.002143 - New Renaissance Middle School

HVAC Improvements

Building Envelope Improvements

- Roofing
- Stucco Work
- Exterior Painting

6.2 **Project Budget** - The Budget for this package is as follows.

New Renaissance Middle School

Total Estimated Construction Costs:

\$5,000,000

6.3 **Project Schedule** - The targeted Project Schedule milestones for this project is as follows:

Authorization to Proceed	May 2020
Completion of Design	May 2021
Final Completion – Construction	January 2023

SECTION 7.0 – PROJECT SCOPE AND SCHEDULE

7.1 **Summary Project Scope** - The Scope of Work is summarized below.

- Package B:** P.002148 – Monarch High School
HVAC Improvements
Building Envelope Improvements
- Roofing
 - Lightning Protection

7.2 **Project Budget** - The Budget for this package is as follows.

Monarch School	
Total Estimated Construction Costs:	\$5,000,000

7.3 **Project Schedule** - The targeted Project Schedule milestones for this project is as follows:

Authorization to Proceed	May 2020
Completion of Design	February 2021
Final Completion – Construction	August 2022

SECTION 8.0 – PROJECT SCOPE AND SCHEDULE

8.1 **Summary Project Scope** - The Scope of Work is summarized below.

Package C: P.002141 – Lyons Creek Middle School
HVAC Improvements
Building Envelope Improvements

- Roofing

Art Room Renovation and Equipment
Music Room Renovation and Conversion of Existing Space to Music / Art

8.2 **Project Budget** - The Budget for this package is as follows.

Lyons Creek Middle School	
Total Estimated Construction Costs:	\$ 4,800,000

8.3 **Project Schedule** - The targeted Project Schedule milestones for this project is as follows:

Authorization to Proceed	May 2020
Completion of Design	April 2021
Final Completion – Construction	August 2022

SECTION 9.0 – PROJECT SCOPE AND SCHEDULE

9.1 **Summary Project Scope** - The Scope of Work is summarized below.

Package D: P.001676 - Cresthaven Elementary School
HVAC Improvements
Building Envelope Improvements

- Roofing
- Exterior Painting

9.2 **Project Budget** - The Budget for this package is as follows.

Cresthaven Elementary School	
Total Estimated Construction Costs:	\$4,500,000

9.3 **Project Schedule** - The targeted Project Schedule milestones for this project is as follows:

Authorization to Proceed	May 2020
Completion of Design	May 2021
Final Completion – Construction	December 2022

END OF RFQ

**The School Board of Broward County, Florida
Economic Development & Diversity Compliance
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351**

(754) 321-0505

Document 00467: Supplier Diversity Outreach Program Guidelines

General:

The Economic Development & Diversity Compliance's Supplier Diversity Outreach Program is designed to help small, minority, and women business enterprises (S/M/WBE) participate in school district procurement and contract activities. The purpose of the program is to spur economic development and support S/M/WBEs to successfully expand in the tri-county marketplace.

SBBC has adopted School Board Policy 3330 - Supplier Diversity Outreach Program. The provisions of the Policy and the Standard Operating Procedures shall apply to all competitive solicitations for construction, professional services, commodities, and other contractual services, and any resulting contract documents including change orders, and amendments.

Failure to comply with the Supplier Diversity Outreach Program requirements found in the solicitation or to submit any of the information required herein shall result in the bidder being found nonresponsive to the E/S/M/WBE Program requirements.

Information:

School Board Policy 3330 - Supplier Diversity Outreach Program (SDOP) and the SDOP Standard Operating Procedures established pursuant to that Policy serve the school district's compelling interest to remedy the various ongoing effects of marketplace discrimination against S/M/WBEs that are ready, willing, and able to sell goods and services to SBBC. The SBBC encourages each awardee to make every reasonable effort to include S/M/WBE participation on any contract award under the Solicitation.

"Notice to Proceed" ("NTP") and "Authorization to Proceed" ("ATP") are used interchangeably for the purposes of this document and other SDOP specific forms and references.

"Subcontractor" and "Subconsultant" are used interchangeably for the purposes of this document and other SDOP forms and documents.

"Firm", "Contractor" and "Consultant" are used interchangeably for the purposes of this document and other SDOP specific forms and references.

Emerging/Small/Minority/Women Business Enterprise (S/M/WBE) Certifications:

At the time of submission of a response to a solicitation, the contractor shall identify all E/S/M/WBE firms to be utilized or provide a completed signed Bidder/Proposal Contractor Assurance Statement – Document 00471. All E/S/M/WBE Prime who is self-performing must complete Document 00470 – S/M/WBE Statement of Intent listing percentage of Self Performance.

In response to Construction Bids, all E/S/M/WBE Prime that is self-performing, must ensure the percentage of work listed in Document – 470 S/M/WBE Statement on Intent match the Percentage of Work listed on Document 00425 Certificate of Intent. A letter or certificate confirming the EDDC Department's approval of E/S/M/WBE certification status must be submitted on behalf of each S/M/WBE firm as part of the bid submission.

Document 00467: Supplier Diversity Outreach Program Guidelines

In response to an RFQ: Any participation by firms not certified by SBBC at the time of Qualifications Statement will not count in the RFQ evaluation process in the Contractor S/M/WBE Participation Category. However, firms that are certified by SBBC after the Qualifications Statement's tentative award will count towards the Contractor's S/M/WBE project goal attainment. The Contractor shall contact SDOP to provide the updated information.

For information on E/S/M/WBE Certification, or to obtain information on locating certified S/M/WBEs, contact SBBC's Supplier Diversity Outreach Programs at 754-321-0505 or <http://www.browardschools.com/sdop>.

A "Minority Business Enterprise (MBE)" is defined as any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed, and controlled by one (1) or more minority group members, and that is ready, willing, and able to sell goods or services that are purchased by SBBC. The enterprise annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry as established by the U.S. Small Business Administration and meet the significant business presence requirements in accordance with School Board Policy 3330.

A "Women Business Enterprises (WBE)" is defined as any legal entity, except a joint venture, that is organized to engage in for-profit transactions, at least fifty-one percent (51%) owned, managed, and controlled by one (1) or more non-minority, women individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by SBBC and that meets the significant business presence requirements in accordance with School Board Policy 3330. The enterprise annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry as established by the U.S. Small Business Administration; and meets the significant business presence requirements in accordance with School Board Policy 3330.

A "Minority/Women Business Enterprise (M/WBE)" is defined as a firm that is certified as either a minority Women business enterprise and which is at least fifty-one percent (51%) owned, managed, and controlled by one (1) or more minority group members and/or women, and that is ready, willing, and able to sell goods or services that are purchased by the school district.

An "Emerging M/WBE" is defined as a certified M/WBE firm whose annual revenues and number of employees are no greater than twenty-five percent (25%) of the small business size standards for its industry as established by the U.S. Small Business Administration and meets the significant business presence requirements in accordance with School Board Policy 3330.

A "Small Business Enterprise (SBE)" is defined as a corporation, partnership, sole proprietorship, or other legal entity for making a profit, which is independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories. The enterprise annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry(ies) as established by the U.S. Small Business Administration and meets the significant business presence requirements in accordance with School Board Policy 3330.

An "Emerging SBE" is defined as a certified SBE corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than twenty-five percent (25%) of the small business size standards for its industry as established by the U.S. Small Business Administration and meets the Significant Business Presence requirements in accordance with School Board Policy 3330.

Document 00467: Supplier Diversity Outreach Program Guidelines

Compliance:

The School District shall monitor performance and compliance in accordance with School Board Policy 3330. During the term of any subsequent contract, the awardee shall comply with the S/M/WBE Subcontractor Utilization Plan made in its response to the solicitation. Each contract/agreement containing certified firm commitment must include a requirement of periodic reporting of both certified and non-certified subcontractor participation. For construction projects, reporting is monthly through e-Builder. For Design and Pre-construction CMAR Awards, reporting should be provided at each phase being invoiced through e-Builder. Further, non-receipt of utilization reporting may result in breach of contract. The submission of reporting is further identified to be a condition for payment of the contractor.

SDOP will monitor and record non-receipt of required reports on a quarterly basis. The report will include the name of the prime, the project(s) involved, and the report(s) missing. Compliance for use of S/M/WBEs shall include tasks and proportionate dollar amounts throughout the term of the contract, including amendments and change orders. After contract execution, the awardee shall maintain the level of utilization as established in the contract's S/M/WBE Subcontractor Utilization Plan. Failure to comply with the SDOP requirements in the contract will be considered a material breach resulting in recommendation for sanctions, penalties and which could include debarment proceedings pursuant to School Board Policy.

Prime & Subcontractor Terms and Conditions

In keeping with the objective of Policy 3330 and Chapters 9 and 13 of the Standard Operating Procedures, SBBC requires the terms and conditions that are included in the Prime Contractor or Prime Consultant or Prime Vendor's (Prime) Agreement between the Prime and SBBC be extended in similar or equal capacity in the contracts between the Prime and all lower tier Subcontractors. Refer to Document 00472 - Prime/Subcontractor Contract Terms & Conditions. All Bidders must comply with the Prime/Subcontractor Terms & Conditions Document 00472.

The Subcontractors Utilization Plan shall consist of the following documentation, which must be attached to the Bid solicitation:

1. S/M/WBE Subcontractor Participation Schedule (Document 00475)
2. Statement of Intent to Perform as an S/M/WBE Subcontractor (Document 00470)
3. Bidder/Proposer Assurance Statement (Document 00471) – ***(Only Applicable to CSMP and CMAR projects)***
Note: For projects utilizing a CMAR project delivery method, exact M/WBE or SBE participation during construction phase will not be known until proposals are received, subcontractors are selected, and the Guarantee Maximum Price (GMP) is developed. Please state the CM's commitment for M/WBE or SBE participation during the construction phase **on the Bidder/Proposer Assurance Statement (Document 00471)**. The Construction Manager (CM) will be obligated to meet this commitment as a condition to gain SBBC approval of the GMP.

In response to an RFQ If percentages vary between the Participation of Schedule (Document 00475) and the M/WBE Statement of Intent (Document 00470), the percentage listed on the Statement of Intent (Document 00470) will be used to determine participation. If the M/WBE Statement of Intent (Document 00470) - is not signed by the Subcontractor, participation attributed to the listed vendor will not be included even if they are listed on Participation Schedule Form (Document 00475). If no percentage is listed, Submitting Firm will not receive points. If a percentage range is provided for an M/WBE Subcontractor on the M/WBE Statement of Intent Form (Document 00470), the higher determined percentage in the range will be used to calculate participation and therefore, effectively, represents the prime's commitment to the contract goal.

Document 00467: Supplier Diversity Outreach Program Guidelines

Nondiscrimination:

The respondent hereby certifies and agrees that the following information is correct:

In preparing its response on this project, the respondent has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in School Board Policy 3330 – Supplier Diversity Outreach Program, Section D.1; to wit: discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for SBBC to reject the response submitted by the respondent on this project, and terminate any contract awarded based on the response. As a condition of submitting a response to SBBC, the respondent agrees to comply with SBBC's Nondiscrimination Policy as described under its School Board Policy 3330 – Supplier Diversity Outreach Program, Section D.1.

Affirmative Procurement Initiatives (APIs) for Professional Services:

"Affirmative Procurement Initiatives (API)" – refers to various SDOP tools and solicitation incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals, and joint venture incentives. (For full descriptions of these and other SDOP tools, see, Section E of School Board Policy 3330 and the SDOP Standard Operating Procedures.)

Penalties and Sanctions:

Upon the receipt of a recommendation from the Superintendent of Schools regarding the failure of the prime or its authorized agents to comply with any portion of the SDOP policy and Section 13 of the Standard Operating Procedures, the SBBC may take actions regarding the non-complying party, including, but not limited to, suspension of contract, withholding payments due, rescission or termination of contract based upon the failure to comply with SDOP policy requirements, refusal to accept bids, responses, Qualification Statements and proposals, disqualification of a respondent, contractor, or other business entity from eligibility for providing goods or services to the SBBC for a period not to exceed two (2) years (upon SBBC's approval) and/or liquidated damages equal to the difference between the committed versus actual dollar value of S/M/WBE participation.

Any person who violates these provisions shall be subject to penalties and sanctions established by SBBC and to the maximum penalty provided by law.

Good Faith Efforts:

If the information submitted in the response demonstrates that a Contractor does not meet the S/M/WBE Subcontractor Goal, then the Contractor shall submit information supporting its good faith efforts that is sufficient to satisfy SDOP.

If a respondent is unable to comply with the API requirements imposed by SBBC under the terms of the SDOP policy, as required in the solicitation, such respondent shall complete and submit an S/M/WBE Good Faith Effort Waiver Request Form, at the time the solicitation is due. The Form shall include specified documentation which demonstrates a good faith effort to comply with the requirements as described under the selected API.

In making the required judgment, SDOP will consider some or all of the following good faith efforts. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a Contractor has made good faith efforts, SDOP will evaluate the efforts that a Contractor has made and the quantity and intensity of these efforts.

Document 00467: Supplier Diversity Outreach Program Guidelines

SBBC has developed concise, detailed, and quantifiable good faith effort requirements for prime contractors to ensure they are making a legitimate attempt to meet the APIs. Meeting the goal, or making good faith efforts to meet the goal, is a condition of being issued a Notice to Proceed (NTP) or Authorization to Proceed (ATP).

The listing of S/M/WBE Subcontractors by a Contractor shall constitute a representation by the Contractor that such entity is qualified and available, and a commitment by the Contractor that, if it is issued a NTP or ATP, it will enter into a subcontract in the amount set forth in its submission, subject to the terms of these Guidelines.

Respondents must obtain a total of **seventy (70) or more points out of One Hundred (100)** to indicate that the Good Faith Efforts were sufficient and to be deemed compliant

The following actions outline evidence of the minimum good faith effort to meet the SDOP S/M/WBE subcontracting goal and describe the criteria to quantify good faith efforts.

Advertising (5 points)

Effort: Bidders must advertise opportunities for SBBC-certified S/M/WBEs in a minimum of three (3) separate print newspapers and post ten (10) digital media notices using various combinations of Twitter, Facebook, Trade Associations, and ethnic focused media outlets by no later than ten (10) business days once the bid is advertised. The Bidder is highly encouraged to effectively use the services of available small/minority/women community organizations; small/minority/women contractors' groups; local, State, and Federal small/minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of S/M/WBEs. Bidders are required to publish these opportunities in the general circulation media, minority-focused media, trade association publications, or trade-related publications, unless the SBBC waives this requirement due to time constraints. Pro forma mailings to S/M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts.

Documentation: The advertisement shall include the name and location of the project, the location where plans and specifications can be viewed, the subcontractor proposal due date, and the items of work or specialties being solicited. (i.e. Newspaper Tear Sheet and copy of Social Media Post).

Outreach to Identify S/M/WBEs (15 points)

Effort: The bidder should solicit this interest as early in the solicitation process as practicable, but no later than ten (10) business days after the Pre-bid Conference to allow the S/M/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the S/M/WBEs are interested by taking appropriate steps to follow up initial solicitations.

The bidder should attempt to reach out to S/M/WBEs by utilizing the SDOP approved online databases of certified firms. The scope of work required should be identified, and the contractor needs to seek out relevant companies to perform the specified work.

Documentation: The Contractor should retain dated documentation of any correspondence targeting S/M/WBE.

Document 00467: Supplier Diversity Outreach Program Guidelines

Pre-Bid Meeting Attendance (5 points)

Effort: Attendance at the pre-bid meeting is mandatory to comply with the good faith effort requirement in order to be awarded the 5 points. If a pre-bid meeting is not offered, five (5) points will be deducted from the seventy (70) point minimum score.

Documentation: The Contractor's name should appear on SBBC's pre-bid meeting sign-in sheet to document the company presence.

Timely Written Notification (20 points)

Effort: Selecting portions of the work to be performed by S/M/WBEs in order to increase the likelihood that the assigned goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate S/M/WBE participation, even when the prime bidder might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates S/M/WBE participation

Documentation: Written correspondence with the subcontractor's name, address, contact person, and the date of the written notice should be documented. Written notification must be dated and transmitted at least ten business days prior to the bid due date and include verification of transmission date. Such verification may include emails and copies of certified mail return receipts.

Initial Contact Follow-up (15 points)

Effort: The contractor should follow-up on initial solicitations by contacting S/M/WBE subcontractors prior to the bid opening to determine with certainty whether the subcontractors are interested in performing the specific items of work on the project. Such contact shall be within a reasonable amount of time to allow the prospective S/M/WBE subcontractor an opportunity to submit a competitive sub-bid. The content of the initial letter, email, or facsimile should be different for the follow-up correspondence to indicate the additional effort expended to secure bidders.

Documentation: The list of subcontractors that were contacted, including results of that contact, documented by a telephone log, e-mail printout, automated facsimile journal, or fax transmittal documents, is required. The record should include the S/M/WBE's name, telephone number, contacted person, dates of contact, and the outcome.

Identify Items of Work (15 points)

Effort: Bidder is to provide interested S/M/WBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner, not less than five (5) days, to provide their Sub-Contractor Proposal.

Documentation: The list utilized to define the specific items of work solicited, including the identification process for S/M/WBE firms from which such work was solicited, is required. Documents should be reviewed to determine if the work is specific to that listed in the goal-setting document for the specific work item.

Document 00467: Supplier Diversity Outreach Program Guidelines

Negotiate in Good Faith (15 points)

Effort: The contractor should negotiate in good faith with the S/M/WBE, and not unjustifiably reject bids, quotes, and proposals prepared by the S/M/WBE as unsatisfactory.

Documentation: Written statements of the names, addresses, and telephone numbers of subcontractors contacted by the contractor to negotiate price or services should be submitted. Dates of the negotiations and the results should be included, as well as documentation of the quotes and/or proposals received from S/M/WBEs; and evidence as to why additional Agreements could not be reached for S/M/WBEs to perform the work.

Bonding Requirements (5 points)

Effort: Waive or reduce bonding requirements for subcontractors where possible

Documentation: Copies of Respondent's commitment to waive or reduce bond requirements.

Assist in Financing, Bonding, and Insurance (5 points)

Effort: Where applicable, the contractor should advise and make efforts to assist interested S/M/WBEs in obtaining bonds, lines of credit, or insurance that SBBC requires.

Documentation: Written statements of the type of assistance offered to S/M/WBEs are required. The contractor should provide the name, contact person, and telephone number of the bonding company or financial institution offering assistance.

Acceptability of S/M/WBE Subcontractor Good Faith Efforts Submission:

1. If the SDOP questions the acceptability of the Firm's S/M/WBE subcontractor submissions, the Contractor shall present information to substantiate its compliance with the applicable requirements to SDOP within five (5) consecutive business days.
2. Not later than seven (7) calendar days after the communication with the Contractor, SDOP shall make a written recommendation. Recommendations to reject the Firm's Good Faith Efforts Submission may be submitted to the Director of Procurement & Warehousing Services for review and acceptance. The rejection will result in the Firm's response being deemed nonresponsive.
 - a. For RFQs, in the event, the highest ranked firm is deemed nonresponsive by PWS, District Staff will evaluate and negotiate with the next responsive /responsible firm/
 - b. For Construction Hard Bids, in the event the or lowest bidder is deemed nonresponsive, district staff will evaluate the next responsive / responsible bidder

Document 00467: Supplier Diversity Outreach Program Guidelines

Calculation of S/M/WBE Subcontractor Participation toward Contract Goal:

For projects utilizing a CMAR project delivery method, exact M/WBE or SBE participation during construction phase will not be known until proposals are received, subcontractors are selected, and the Guarantee Maximum Price (GMP) is developed. Please state the CM's commitment for M/WBE or SBE participation during the construction phase. The Construction Manager (CM) will be obligated to meet this commitment as a condition to gain SBBC approval of the GMP.

S/M/WBE subcontractor participation shall be calculated as follows:

1. Once the SBBC has determined that a firm is an eligible S/M/WBE subcontractor, the total dollar value of the contract awarded to the S/M/WBE subcontractor is counted toward the goal.
2. The SBBC shall count toward the goal only expenditures to S/M/WBE Subcontractors that perform a commercially useful contractual function in the work. An S/M/WBE Subcontractor is considered to perform a useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out the responsibilities by actually performing and supervising the work involved.
3. Consistent with normal industry practices, an S/M/WBE subcontractor may enter into subcontracts. If such an entity subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices to non-S/M/WBE subcontractors, the entity shall not be considered as an S/M/WBE subcontractor.

Issuance of an NTP or ATP:

Provided the Firm submitted the completed forms and information as required by these Guidelines and submitted information to satisfy SDOP that it has met the API or has made good faith efforts to meet the API, an NTP or ATP may be issued.

Requirements and Procedures Subsequent to the Issuance of a NTP or an ATP:

Subcontracts:

After issuance of an NTP or an ATP, the Firm shall submit, executed subcontract agreements corresponding in all respects to its S/M/WBE Subcontractor Utilization Plan (including authorized substitutions).

If there is a change to the S/M/WBE Subcontractor Utilization Plan, the prime contractor/prime consultant shall submit a request for change to EDDC. Only EDDC approved Termination/Deletions/Additions & Substitution of S/M/WBE Subcontractors will be counted towards the committed participation goal.

Termination/Deletions/Additions & Substitution of S/M/WBE Subcontractors:

Changes are not accepted pre-award. Post-award, the School Board Policy 3330 and Section 9 of the Standard Operating Procedures requires that a prime may not deviate from the accepted certified subcontracting team on the project without the written approval of EDDC and Program Manager or designee. The reason for review of such requests is to prevent bid shopping and prevent undue or arbitrary removal of Broward Schools certified small businesses.

1. Termination of a S/M/WBE Certified Firm: A certified firm may not be removed from a subcontracting team without the prior written consent of EDDC and the Program Manager or designee. The acceptance of the request shall be in writing to the requesting prime contractor/prime consultant.
 - a. If a request to delete or substitute a certified firm is granted by EDDC, the prime must replace the removed firm with another M/WBE of at least equal contracting value to the overall project. Failure to do so will result in a notice to cure from EDDC and potentially a notice of violation if the matter is not resolved. The prime

Document 00467: Supplier Diversity Outreach Program Guidelines

contractor/prime consultant is responsible for utilizing good faith efforts to obtain the level of certified participation agreed upon at project inception.

2. Additions, Deletions, & Substitutions: Changes are not accepted pre-award. Post-award, the School Board Policy 3330 requires that a prime may not deviate from the accepted certified subcontracting team on the project without the written approval of the Program Manager or designee. The reason for review of such requests is to prevent undue or arbitrary removal of S/M/WBE certified small businesses.
3. Reasons to request a substitution of S/M/WBEs in a Contractor's S/M/WBE Subcontractor Utilization Plan include, but are not limited to the following:
 - b. Subcontractor is no longer qualified, Subcontractor has unreasonably refused to execute the subcontract agreement without cause, Subcontractor is no longer able to perform the work, Subcontractor materially breaches its subcontract agreement with the contractor.
4. If after a "reasonable" good faith effort measures, the Prime is unable to find a substitute S/M/WBE, a post-award waiver may be requested, which documents the reasons for the contractor's inability to meet the goal requirement. In the event the contractor is found not to have performed good faith efforts to find a suitable substitute for the initial S/M/WBE Subcontractor Utilization Plan (Doc.00485) the contract may, in the District's sole discretion, be terminated for material breach.
 - c. The prime shall make every reasonable effort to propose and enter into an alternative subcontract agreement or agreements for the same work to be performed by other certified S/M/WBE subcontractor(s) for a contract price for such work equal to or less than the price originally scheduled for such work (less all amounts previously paid thereof).
5. Compliance with Contract Goal:

The Contractor shall be deemed to be in continued compliance with the established goal for the S/M/WBE Subcontractor Utilization Plan if the Contractor meets or exceeds the goal established in the S/M/WBE Subcontractor Utilization Plan or if the Contractor's good faith efforts are approved.

6. Monthly Monitoring Report:

The Contractor shall submit a S/M/WBE Monthly Subcontractor Utilization Report as required in section XXX of these guidelines) when the Contractor's agreement with SBBC includes an S/M/WBE Subcontractor Utilization Plan. The S/M/WBE Monthly Subcontractor Utilization Report can be obtained from SDOP.

Should the Contractor fail to comply with the provisions required for monthly reporting requirements, it shall be considered in default of its contract. (See Sanctions and Penalties)

Document 00467: Supplier Diversity Outreach Program Guidelines

Non-Compliance with Contract Goal:

1. Should the Contractor fail to comply with the provisions required by its S/M/WBE Subcontractor Utilization Plan, this shall be considered a material breach and therefore the Contractor shall be considered in default of its Contract.

2. **Compliance Requests for Information; Non-Receipt of Compliance Information**
 - a. The EDDC may request information to assist with producing compliance reviews/reports. Requests for information must be properly titled, sufficiently detailed, printed on letterhead or via internal email (including staff name and contact information), and must have a date for response within five (5) business days or less as determined by compliance staff.

 - b. After efforts to ascertain the information have been exhausted and the information requested has not been provided, the compliance process will proceed with the information on hand. Mention will be made of any missing information, in official correspondence, and the status of the request(s).



**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
DEVELOPMENT & DIVERSITY COMPLIANCE DEPARTMENT (EDDC)**

Document Number 00475

**SMALL/MINORITY/WOMEN BUSINESS-OWNED BUSINESS ENTERPRISE SUBCONTRACTOR
PARTICIPATION SCHEDULE**

DATE	
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SOLICITATION INFORMATION

Solicitation #:		Project Start Date:	
Project Name:			
Project Location:			
Bidder/Submitting Firm:			
Address:			
Contact Person:		Email Address:	Phone #:

ORGANIZATION STATUS

How is your firm participating? <i>Please select.</i>	Business Name	Business Address	Business Phone #	Type of Work to be Performed	% of Work	\$ Amount
Bidder/ Submitting Firm					%	\$
S/M/WBE Subcontractor – Tier 1					%	\$
S/M/WBE Subcontractor – Tier 1					%	\$
S/M/WBE Subcontractor – Tier 1					%	\$
S/M/WBE Subcontractor – Tier 2					%	\$
S/M/WBE Subcontractor – Tier 2					%	\$
S/M/WBE TOTAL PARTICIPATION % & DOLLAR					%	\$
TOTAL CONTRACT AMOUNT:						\$

BIDDER/SUBMITTING FIRM

The listing of S/M/WBE(s) shall constitute a representation by the bidder/submitting firm to the SBBC that the bidder/submitting firm believes such S/M/WBE(s) to be technically and financially qualified and available to perform the work described. Bidders/submitting firms are advised that the information contained herein may be verified. I certify that all information contained in this form is true and accurate to the best of my knowledge.

Bidder/Submitting Firm Signature	Name & Title (Print)	Date
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THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
ECONOMIC DEVELOPMENT & DIVERSITY COMPLIANCE DEPARTMENT (EDDC)

Document Number 00470

**STATEMENT OF INTENT TO PERFORM AS AN SMALL /MINORITY/WOMEN-OWNED BUSINESS
 ENTERPRISE (S/M/WBE) SUBCONTRACTOR**

SOLICITATION #:

Signed Statement of Intent to Perform as a S/M/WBE Subcontractor form must be completed by the owner or authorized principal of each S/M/WBE firm listed in the Subcontractor Participation Schedule (Document Number 00485).

STATEMENT OF INTENT

BID/RFP or PROJECT TITLE: _____

PROJECT # : _____

NAME OF PRIME BIDDER/CONSTRUCTION MANAGER: _____

The undersigned intends to perform work with the above project as (check one): Tier 1 Tier 2

The undersigned (**Tier 1 firm**) _____ is certified as an S/M/WBE vendor by The SBBC's EDDC.
 Yes No

The undersigned (**Tier 2 firm**) _____ is certified as an S/M/WBE vendor by The SBBC's EDDC.
 Yes No

The undersigned intends to perform work with the above project as: PRIME TEAM

DESCRIPTION OF WORK & VALUE			
How is your firm participating? <i>Please select.</i>	Please provide the details and value of the work to be performed:		
SBBC Certified Prime, Tier 1 or Tier 2	Type of Work	Agreed Upon Price	% of Work
		\$	%
		\$	%
		\$	%
	TOTAL VALUE OF WORK	\$ 0	0 %

SIGNATURES

(Company, Prime Bidder)	(Company, Tier 1)	(Company, Tier 2)
(Name and Title)	(Name and Title)	(Name and Title)
(Signature/Date)	(Signature/Date)	(Signature/Date)

This formal agreement is conditioned upon the Bidder/Submitting Firm executing a contract with SBBC.

Economic Development & Diversity Compliance Department

7720 West Oakland Park Blvd., Suite 323, Sunrise, FL 33351 ▪ (754) 321-0505 www.BrowardSchools.com/SDOP



S/M/WBE MONTHLY SUBCONTRACTOR UTILIZATION REPORT

SECTION I - GENERAL INFORMATION

Project Name:		Contract Number and Work Order Number (if applicable):	
Report #:	Reporting Period: _____ to _____	S/M/WBE Contract Goal:	Contract Completion Date:
Prime Contractor Name:		Project Manager (PM) Name:	
Prime Contractor Street Address:			
Prime Contractor Phone #:	Prime Contractor Email Address:	PM Phone #:	PM Email Address:

SECTION II - UTILIZATION INFORMATION

Prime Contractor must list ALL Certified and non-certified subcontractors that will be utilized for the entire contract period.
 For assistance in completing this form, please call the Supplier Diversity Outreach Program at (754) 321-0505.

ROLE	FEDERAL IDENTIFICATION NUMBER	BUSINESS NAME	S/M/WBE CERTIFIED BY SBBC (Y/N)	DESCRIPTION OF WORK	TOTAL PROJECT AMOUNT	AMOUNT PAID DURING REPORTING PERIOD	INVOICE #	TOTAL PAID TO DATE
PRIME CONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
Total Paid to Date for All S/M/WBE Subcontractors					\$	\$		\$

SECTION III - AFFIDAVIT

I hereby affirm that the information on this form is true and complete to the best of my knowledge.

Prime Contractor Authorized Personnel (Signature)	Prime Contractor Authorized Personnel (Print)	Title	Date



FORM INSTRUCTIONS:

S/M/WBE MONTHLY SUBCONTRACTOR UTILIZATION REPORT

SECTION I : GENERAL INFORMATION

1. **Project Name:** Enter the entire name of the Project.
2. **Contract Number (work order):** Enter the District contract number and work order number
3. **Report Number:** Enter the S/M/WBE Monthly Subcontractor Utilization Report number.
4. Reports must be in a numerical series (i.e., 1, 2, 3).
5. **Reporting Period:** Enter the beginning and end dates for which this report covers (i.e., 10/01/2016: 9/30/2018)
6. **S/M/WBE Contract Goal:** Enter the S/M/WBE Contract Goal on entire contract.
7. **Contract Completion Date:** Enter the expiration date of the contract, (not work order).
8. **Prime Contractor Name:** Enter the complete legal business name of the Prime Contractor.
9. **Prime Contractor Street Address:** Enter the mailing address of the Prime Contractor.
10. **Prime Contractor Phone Number:** Enter the telephone number of the Prime Contractor.
11. **Prime Contractor Email Address:** Enter the email address of the Prime Contractor.
12. **Project Manager (PM) Name:** Enter the name of the Project Manager for the Prime Contractor on the project.
13. **PM Telephone Number:** Enter the direct telephone number of the Prime Contractor’s Project Manager.
14. **PM Email Address:** Enter the email address of the Prime Contractor’s Project Manager.

SECTION II : UTILIZATION INFORMATION

15. **Federal Identification Number:** Enter the Federal Identification Number of the S/M/WBE Subcontractor(s)
16. **Business Name:** Enter the complete legal business name of the S/M/WBE Subcontractor(s)
17. **S/M/WBE Certified by BCPS (Yes/No):** Enter “yes” or “no” to indicate if the subcontractor is S/M/WBE Certified by BCPS
18. **Description of Work:** Enter the type of work being performed by the S/M/WBE Subcontractors(s)
(i.e., electrical services).
19. **Total Project Amount:** Enter the dollar amount allocated to the S/M/WBE Subcontractors(s) for the entire project (i.e., amount in the subcontract agreement).
20. **Amount Paid During Reporting Period:** Enter the total amount paid to the S/M/WBE Subcontractor(s) during the reporting period.
21. **Invoice Number:** Enter the S/M/WBE Subcontractor’s invoice number related to the payment reported this period.
22. **Total Paid (to Each Subcontractor) to Date:** Enter the total amount paid to the S/M/WBE Subcontractor(s) to date.
23. **Total Paid to All Subcontractors to Date:** Enter the total amount paid to all subcontractors during reporting period.

SECTION III: AFFIDAVIT

24. **Affidavit:** Statement attesting to the contents of the report.
25. **Prime Contractor Name Authorized Personnel (signature):** Signature of the employee that is authorized to execute the S/M/WBE Subcontractor Utilization Report.
26. **Prime Contractor Name Authorized Personnel (print):** Printed name of the employee that is authorized to execute the S/M/WBE Subcontractor Utilization Report.
27. **Title:** Enter the title of authorized employee completing the S/M/WBE Subcontractor Utilization Report.
28. **Date:** Enter the date of submission of the S/M/WBE Subcontractor Utilization Report to the District.



S/M/WBE PARTICIPATION GOOD FAITH EFFORT FORM

DATE: []

CONTACT INFORMATION

Table with contact information fields: Solicitation Title, Solicitation #, Bidder/Submitting Firm, Contact Person, Phone #, Email.

GOOD FAITH EFFORT DOCUMENTATION

The purpose of this form is to demonstrate good faith efforts in meeting the required subcontracting goal. Respondents must obtain a total of seventy (70) or more points in order to pass, indicating that good faith efforts were sufficient. The good faith efforts demonstrated must be with Broward County Public Schools S/M/WBE Certified firms.

The following actions outline evidence of the minimum good faith effort to meet the SDOP S/M/WBE subcontracting goal and describe the criteria to quantify good faith efforts.

SECTION A – Advertising Effort 5 points

Please provide documentation and supporting evidence to show how the criteria was fulfilled.

Advertise opportunities for SBBC-certified S/M/WBEs a minimum of three (3) times in print and/or digital media outlets at least two (2) weeks prior to the bid opening.

Publish these opportunities in the general circulation media, minority-focused media, trade association publications, or trade-related publications, unless SBBC waives this requirement due to time constraints.

Additional efforts, if any: (Provide information in space provided below)

Requirements:

Attach copy of advertisements (i.e. newspaper Tear Sheet) with the name and location of the project, the location where plans and specifications can be viewed, the subcontractor proposal due date, and the items of work or specialties being solicited.



S/M/WBE PARTICIPATION GOOD FAITH EFFORT FORM

SECTION B – Outreach to Identify S/M/WBE Firms	15 points
Please provide documentation and supporting evidence to show how the criteria was fulfilled.	
<p>Identify the scope of work required</p> <p>Seek relevant companies to perform the specified work</p> <p>Contact S/M/WBEs by utilizing the EDDC approved online database of certified firms</p> <p>Additional efforts, if any: (Provide information in space provided below)</p>	
Requirements: <p>Attach dated documentation of all correspondence to target S/M/WBE Certified firms listed on www.BrowardSchools.com/sdop</p> <p>Include in dated documentation the business name, telephone number, fax number, email address, and type of work solicited to perform</p>	

SECTION C – Pre-Bid Meeting Attendance	5 points
Please provide documentation and supporting evidence to show how the criteria was fulfilled.	
<p>Attend pre-bid meeting to comply with the good faith effort requirement. Attendance is mandatory.</p> <p><i>Note: If a pre-bid meeting is not offered, five (5) points will be deducted from the seventy (70) point minimum score.</i></p> <p>Additional efforts, if any: (Provide information in space provided below)</p>	
Requirements: <p>Signature on SBBC's pre-bid meeting sign-in sheet to document the proposer's presence.</p>	



S/M/WBE PARTICIPATION GOOD FAITH EFFORT FORM

SECTION D – Timely Written Notification Effort **20 Points**

Please provide documentation and supporting evidence to show how the criteria was fulfilled.

Solicit, in writing, relevant S/M/WBE subcontractors for bids and material quotes.

Solicit relevant S/M/WBEs, in a timely manner, to result in meeting the goal.

Note: Relevant S/M/WBEs are firms that could feasibly provide services or supplies required to complete the scope of services provided in the bid document.

Additional efforts, if any: (Provide information in space provided below)

Requirements:

Attach dated written correspondence with the subcontractor’s name, address, and contact person.

Correspondence must be transmitted at least ten (10) business days prior to the bid due date.

Correspondence must include verification of transmission date. Such verification may include emails, or copies of certified mail return receipts.

SECTION E – Initial Contact Follow-up **15 Points**

Please provide documentation and supporting evidence to show how the criteria was fulfilled.

Follow-up with S/M/WBEs, in writing, on initial outreach prior to the bid opening to determine with certainty their interest in performing the specific scope of work on the project.

Follow-up contact must be made in a timely manner to allow the prospective S/M/WBE subcontractor an opportunity to submit a competitive sub-bid.

Follow-up correspondence date should differ from original outreach to verify the additional effort expended to secure bidders.

Additional efforts, if any: (Provide information in space provided below)

Requirements:

List of subcontractors contacted for follow-up

Results of follow-up effort, documented by a telephone log, e-mail printout, copies of certified mail return receipts, or fax transmittal documents

Follow-up record should include the S/M/WBEs name, telephone number, person contacted, date(s) of contact, and the result.



S/M/WBE PARTICIPATION GOOD FAITH EFFORT FORM

SECTION F – Identify Items of Work	15 Points
Please provide documentation and supporting evidence to show how the criteria was fulfilled.	
<p>Identify specific items of the work to be performed by subcontractors.</p> <p>Offer S/M/WBEs portions of the work or other assistance that could reasonably be expected to produce a level of S/M/WBE participation to meet the goals</p> <p>Additional efforts, if any: (Provide information in space provided below)</p>	
<p>Requirements:</p> <p>Include list utilized to define the specific items of work solicited, including the identification process to solicit S/M/WBE firms</p> <p>List of specific items of work must meet goal-setting requirements</p>	

SECTION G – Negotiate in Good Faith	15 Points
Please provide documentation and supporting evidence to show how the criteria was fulfilled.	
<p>Negotiate in good faith with the S/M/WBE</p> <p><i>Note: Proposals, bids, or quotes prepared by S/M/WBE firms may not be unjustifiably rejected.</i></p> <p>Additional efforts, if any: (Provide information in space provided below)</p>	
<p>Requirements:</p> <p>Submit written statements of the subcontractors contacted to negotiate price or services</p> <p>Include name, address, and telephone number of each subcontractor contacted for negotiation</p> <p>Include documentation of quotes and/or proposals received from S/M/WBEs and date of negotiations</p>	



S/M/WBE PARTICIPATION GOOD FAITH EFFORT FORM

SECTION H – Bonding Requirements Effort	5 Points
Please provide documentation and supporting evidence to show how the criteria was fulfilled.	
Waive or reduce bonding requirements for subcontractors.	
Additional efforts, if any: (Provide information in space provided below)	
Requirements: Include copy of commitment to waive or reduce bonding requirements for S/M/WBEs.	

SECTION I – Assist in Financing, Bonding, and Insurance Effort	5 Points
Please provide documentation and supporting evidence to show how the criteria was fulfilled.	
Advise and make efforts to assist interested S/M/WBEs in obtaining bonds, lines of credit, or insurance that SBBC requires.	
Additional efforts, if any: (Provide information in space provided below)	
Requirements: Include written statements of the type of assistance offered to S/M/WBEs, including the name, contact person, and telephone number of the bonding company or financial institution offering assistance.	

Respondents will be considered non-responsive upon denial of the S/M/WBE Participation Good Faith Effort Form and Subcontractor Utilization Plan. For more information, please contact the EDDC Office at (754) 321-0505.

AFFIRMATION

I CERTIFY THAT ALL INFORMATION CONTAINED IN THIS FORM IS ACCURATE AND COMPLETE, AND UNDERSTAND THAT IF THIS REQUEST FOR WAIVER IS DENIED AND I FAIL TO MEET THE REQUIREMENTS OF THIS SOLICITATION, MY RESPONSE TO THIS SOLICITATION WILL BE DEEMED NON-RESPONSIVE.

Signature:

Print Name/Title:

Economic Development & Diversity Compliance Department (EDDC)	Approved	TOTAL SCORE:
	Denied	____/100



STATEMENT OF INTENT FOR M/WBE CONSTRUCTION MANAGER (CM) PARTICIPATION

SOLICITATION #:

A signed *Statement of Intent for Minority/Women-Owned Business Enterprise (M/WBE) Construction Manager (CM) Participation form* must be completed by the owner or authorized principals of the M/WBE CM Proposer or Proposers and Non-M/WBE CM Proposer Team for this project. This form should be completed by each Submitting Firm whether it is to form a team or not. If no team is being formed and the Submitting Firm plans to self-perform as the CM, the Submitting Firm must identify itself as Non-M/WBE CM Proposer or M/WBE CM Proposer (as applicable to the firm) and write "N/A" in the other fields. Write "N/A" in any field that is not applicable to your teaming relationship.

STATEMENT OF INTENT

The undersigned parties affirm that they have established a legally binding and effective agreement to collaborate as a team and collectively share in the duties of the Construction Manager.

Non-M/WBE CM Proposer: _____

M/WBE CM Proposer (s): _____

The M/WBE CM Proposer or Proposers and/or Non-M/WBE CM Proposer both affirm that:

1. M/WBE CM Proposer is certified as an M/WBE vendor by The School Board of Broward County, Florida (SBBC).
2. The M/WBE CM Proposer shall have the right and the obligation to perform commercially useful functions consistent with the duties of a Construction Manager for the work anticipated by this solicitation.
3. The portion of Construction Management contract value to be allocated to the M/WBE CM Proposer shall not be lower than the percentage reflected in the table below.
4. Both firms attest that their individual, per project pre-qualification limits meet or exceed the proportion of the contract value being proposed for allocation to each firm, separately.

DESCRIPTION OF WORK & PRIME PERCENTAGE

Please provide the details on the work to be performed by the M/WBE CM Proposer and the percent share of the Construction Management contract value to be allocated:

M/WBE CM	Type of Work	% of CM
		%
		%

SUBMITTING FIRMS' SIGNATURE

(Signature of Non-M/WBE CM Proposer)	Title
(Print Name of Non-M/WBE CM Proposer)	Date
(Signature of M/WBE CM Proposer)	Title
(Print Name of M/WBE CM Proposer)	Date
(Signature of M/WBE CM Proposer)	Title
(Print of Name of M/WBE CM Proposer)	Date



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
ECONOMIC DEVELOPMENT & DIVERSITY COMPLIANCE DEPARTMENT (EDDC)

Document 00471

Bidder/Proposer Assurance Statement

SOLICITATION #:

A prospective Bidder/ Proposer responding to a School District solicitation, for which project scope is not predefined, must submit **Document 00471 – Bidder/Proposer Assurance Statement** – at the time of bid submission. Such documentation is required by the SBBC to affirm its intent to meet the M/WBE subcontracting requirements indicated in the solicitation.

COMPANY: _____

NAME OF PRIME BIDDER/PROPOSER _____

The above-named company commits to the meeting or exceeding the following percentage of M/WBE participation during the life of the contract. This participation percentage proposed is cumulative of all projects awarded under solicitation # _____.

Note: FOR HARD BIDS, M/WBE Prime, who is self-performing, must perform a minimum of 15% of the Work with its own labor force pursuant to Document 00425 – Certificate of Intent as stated in the solicitation.

Failure of a bidder/proposer to commit and submit as required in the solicitation to satisfying the M/WBE subcontracting goal shall render its response non-responsive to the M/WBE requirements per Policy 3330.

 (Signature and Date)

 (Title)

This formal agreement is conditioned upon the Bidder/Proposer executing a contract with SBBC.

Economic Development & Diversity Compliance Department

7720 West Oakland Park Blvd., Suite 323, Sunrise, FL 33351 ▪ (754) 321-0505 www.BrowardSchools.com/SDOP

The School Board of Broward County, Florida
Economic Development & Diversity Compliance Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351

(754) 321-0505

Prime/Subcontractor Contract Terms & Conditions

General:

The Economic Development & Diversity Compliance Department (EDDC) primary focus is to spur economic development and support the emerging, small, minority, and women-owned business enterprises (E/S/M/WBE) to expand in the tri-county marketplace successfully. EDDC manages the SBBC's Supplier Diversity Outreach Program (SDOP) to assist the E/S/M/WBEs to participate in school district procurement and contract activities.

SBBC has adopted School Board Policy 3330 - Supplier Diversity Outreach Program. The provisions of the Policy shall apply to all competitive solicitations for construction, professional services, commodities, and other contractual services and any resulting contract documents, including change orders and amendments.

In keeping with the objective of Policy 3330 and Chapters 9 and 13 of the Standard Operating Procedures, SBBC requires the terms and conditions that are included in the Prime Contractor or Prime Consultant or Prime Vendor's (prime) Agreement between the prime and SBBC be extended in similar or equal capacity in the contracts between the prime and all lower tier subcontractors.

- Modification of subcontractor's scope shall require written agreement by both the Prime and all lower tier subcontractors and Sub-Suppliers.
- Subcontractor contracts shall include a schedule displaying the anticipated duration of each activity to be performed by the subcontractor.
- **Invoice and Payment**
 - Prime shall submit an invoice to the Owner no less frequently than once per month.
 - Invoices submitted by the prime shall include all unpaid line items from subcontractor invoices that are not in dispute.
 - The prime shall raise any dispute of subcontractor invoice within five (5) business days after receipt to Owner; otherwise, the invoice shall be deemed approved as-is. The SBBC shall be notified of any dispute before withholding payment.
 - The prime shall deliver payment to subcontractor within five (5) business days after receiving payment from the Owner.
- **Retainage**
 - All retainage of subcontractor fees shall be released no later than three (3) months after (i) work completed and (ii) final invoice submitted by subcontractor unless there is an open dispute related to work covered by retainage.
 - Retainage amount shall be reduced by half after the subcontractor's work is certified as reaching fifty percent (50%) completion.
- The prime shall identify any back-charges to be applied to subcontractor in writing within three (3) business days of occurrence. Associated costs must be calculated within thirty (30) calendar days after the original notice.
- The subcontractor shall be given at least ten (10) calendar days to cure defaults after receiving written notice outlining default in reasonable detail. EDDC shall be copied on the notification to the subcontractor.
- Notices of Delay

Prime/Subcontractor Contract Terms & Conditions

- The subcontractor shall have the right to deliver a Notice of Delay to the prime in the event of a delay due to no fault of subcontractor that extends beyond two (2) business days.
- The prime shall communicate Notice of Delays to the Owner no later than five (5) business days after receipt from subcontractor.
- **Insurance Provisions**
 - Insurance limits required of the subcontractor shall be no greater than those required by the prime.
 - The length of coverage required of the subcontractor shall be no greater than required by the prime.
 - There shall be no requirement for subcontractor's liability policy to be "noncontributory."
 - Subcontract shall not be required to name the prime as a "loss payee."
- **Change Orders**
 - The subcontractor shall be given at least seven (7) business days to generate final pricing after receiving change order details in writing.

The subcontractor shall not be required to perform work outside of contractually agreed scope until Change Order is mutually agreed to in writing. A copy of the agreed Change Order shall be sent to EDDC within three (3) business days of execution by both parties and before the subcontractor executes any new work. Failure to comply with this requirement will subject the prime to liability for the cost of the subcontractor's services/expenses.

- **Termination, Substitution, Addition or Reduction of Scope**
 - The prime shall not terminate, substitute, replace, reduce the scope of work or otherwise remove an E/S/M/WBE without good cause and EDDC's prior written approval. This includes any instance where the prime seeks to perform work originally designated for an E/S/M/WBE with its own work force; affiliates work force, a non-E/S/M/WBE, or another E/S/M/WBE. E/S/M/WBEs listed on the prime's Schedule of Participation shall be used on the contract as proposed except for good cause.
 - SBBC **considers for a good cause** to be:
 - 1) The E/S/M/WBE fails/refuses to execute a written contract, or
 - 2) The E/S/M/WBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided the prime has not acted in bad faith or a discriminatory manner that prevented such non-performance, or
 - 3) The E/S/M/WBE fails or refuses to meet the prime's reasonable nondiscriminatory bond requirements, or
 - 4) The E/S/M/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness, or
 - 5) The E/S/M/WBE is ineligible to work on public SBBC/public works projects because of debarment or suspension proceedings under local or state law, or
 - 6) The E/S/M/WBE voluntarily withdraws from the project and provides SBBC written notice of its withdrawal and the prime is without fault, or
 - 7) SBBC has determined that the E/S/M/WBE is not a responsible contractor, or
 - 8) The listed E/S/M/WBE is ineligible to receive E/S/M/WBE participation credit for the type of work required, or
 - 9) The E/S/M/WBE owner dies or becomes disabled with the result that the listed E/S/M/WBE is unable to complete its work on the contract, or
 - 10) Other documented good cause SBBC determines compels the termination, removal, replacement, substitution, or reduction in the scope of work of the E/S/M/WBE. Provided that good cause does not exist if the prime seeks to terminate, remove, replace or substitute an E/S/M/WBE it relied upon to obtain the contract so that the prime can self-perform the work for which the

Prime/Subcontractor Contract Terms & Conditions

E/S/M/WBE sub-contractor and/or sub-supplier was engaged or so that the prime can substitute another E/S/M/WBE contractor after contract award.

- 11) Before requesting EDDC approval to terminate, remove, replace or substitute a E/S/M/WBE, the prime must give written notice to the E/S/M/WBE with a copy to EDDC of its intention and the reason for the request.
 - 12) The prime must give the E/S/M/WBE five (5) business days to respond to the notice and advise the prime of the reasons, if any, why it objects to the proposed termination of its subcontract and why SBBC should not approve the prime's request. If public necessity requires (i.e. safety), SBBC will approve a shorter period than the five (5) business days.
- **Duty to Cooperate**
 - The prime and all subcontractors and sub-suppliers must cooperate with any audit or review by the SBBC or its designee.

CONSTRUCTION SERVICES AGREEMENT

BETWEEN

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

AND

CONSTRUCTION MANAGER

FOR

CONSTRUCTION MANAGEMENT AT RISK SERVICES

RFQ NO / PACKAGE (AS APPLICABLE): (RFQ Number)

PROJECT NO: (Project Number)

PROJECT NAME AND LOCATION: (Name)
(Location)
(Location No.)
(City/State/Zip)

CONSTRUCTION MANAGER: (Name)
(StateCorp)
(Street)
(City/State/Zip)
(Phone)(Fax)

PROJECT CONSULTANT: (Name)
(Street)
(City/State/Zip)
(Phone)(Fax)

FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made and entered into this (Day) day of (Month) in the year (Year) by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

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

(Contractor's Name),
(Contractor's Street Address)
(City, State, Zip)
(Contractor's Phone)
(Contractor's FAX)
(Federal Employer Identification Number (FEIN))
(State of Incorporation)

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

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

(Project Title)
(Project Number)
at
(Facility Name)

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

(Project Consultant)

(hereinafter referred to as Project Consultant).

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

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

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ARTICLE 1
THE PROJECT CONSTRUCTION TEAM AND ENTIRE AGREEMENT

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

The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.

No changes, amendments or modifications of any of the terms or conditions of the Agreement shall be valid unless reduced to a written instrument and signed by both parties.

ARTICLE 2 THE WORK

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

ARTICLE 3
CONSTRUCTION MANAGER'S SERVICES

3.1 The services of the Construction Manager shall include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The Construction Manager shall also comply with all requirements of the Florida Building Code (FBC), Florida Fire Prevention Code (FFPC), State Requirements for Educational Facilities (SREF), the Florida K-20 School Code, and any other applicable codes, regulations and procedures that are in effect as of the date the building permit(s) is issued.

- .1 Notwithstanding any other provisions of this Agreement to the contrary, any substantially affected person may appeal any building code dispute or interpretation of the Chief Building Official of the School Board of Broward County, Florida to the Florida Building Commission as set forth in Florida Statute 1013.37(2005) and the Florida Building Code, as amended.

3.2 **GENERAL (Part of Preconstruction Phase)**

- .1 The Construction Manager shall review project requirements, educational specifications, on and off-site development, survey requirements, preliminary budget, and make value engineering and constructability recommendations for revisions to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .2 The Construction Manager shall, subject to Owner's approval and compliance with existing Owner completion schedule, establish a preliminary master project schedule identifying all phases, Critical Path elements, responsibilities of the Owner, Project Consultant, outside agencies, third parties and any other impacts which would affect project schedule and progress and update them monthly throughout the duration of the contract.
- .3 Where the project includes renovation or expansion of an existing Facility, the Construction Manager will assist the Construction Team in preparing an analysis package outlining the condition of the existing Facility, existing structure, existing finishes, and existing equipment, code deficiencies, energy use, and life expectancy of other building systems by providing constructability, value engineering and cost estimates recommendations. The package should contain the Construction Managers recommendations, cost estimates and preliminary schedules. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .4 **e-Builder.** The Construction Manager shall be required to use Owner's Project Management software, e-Builder. One (1) license will be distributed to Construction Manager, at cost to Owner, which will allow access into e-Builder for one or multiple projects as awarded by Owner. Usage of this license will be provided throughout the duration of the project(s). Based on availability, additional licenses may be provided as needed.
- .5 The Construction Manager shall provide project delivery options for the design, bid, and bid packaging of the project for efficient scheduling, cost control and financial resource management. Such information shall be provided to the Owner and Project Consultant in the form of a written report prior to final payment for this phase.
- .6 The Construction Manager shall utilize information and reporting systems to provide the

Owner with monthly reports containing accurate and current cost controls, work status, including but not limited to Work narrative, Work completed/anticipated, short term and long term schedules estimated expenditures, and project accounting systems of the project at all times. Such information shall be provided to the Owner and Project Consultant in the form of a written report, prior to final payment for this phase.

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

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

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

provided to the Owner and Project Consultant in the form of a written report prior to final payment for each phase.

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

1. Foundation / Structural / LCCA / Site and Off-Site Package – 100% Documents
 - (a) A separate 50% completion progress set (for information only) of Building Finish Package drawings shall also be submitted which shall show all of the major characteristics of the project utilities and service, detailed site and floor plans, elevations, sections, schedules, etc.
 - (b) Construction may begin after approvals and building permit is obtained for above package.
2. Building Finish Package – 100% Documents
3. As mutually agreed by the parties in writing.

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

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

- .8 At the time of the submission of the documents referenced in Article 3.4.5, the Construction Manager is required to submit, in writing, a buyout reconciliation of all subcontracts that have been awarded as a product of the initial bid opening date. The result of this reconciliation is to be presented in association with a modified schedule of values reflecting the net buyout adjustment in the Owner Savings / Buyout line on the schedule of values. Any un-awarded values remaining in the GMP shall continue to be carried at their estimated amounts until a subcontract is awarded and adjusted in accordance with Article 6.1 of this agreement.
- .9 Should the Construction Manager desire to submit a bid to self-perform any of the portions of the Work, this intention must be clearly conveyed to the Owner prior to the receipt of any other bids for the same scope of work. All bids to be received for this portion of the Work must be submitted directly to the Owner who will then open and evaluate at bid opening. When three (3) or more bids are received for that portion of work, and the Construction Manager's bid is the lowest and approved by the Owner, the Construction Manager's bid shall be incorporated in the GMP as a lump sum. In the event where fewer than three (3) bids are received for that portion of work which the Construction Manager intends to self-perform, the Owner shall reimburse the Construction Manager for the actual cost of work performed, subject to the supporting documentation provisions as outlined in this Agreement.

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

- .1 The Construction Manager shall fully comply with the provision of the Owner's Project Manual, including but not limited to Division 0 and 1, and the attached General Conditions. In the event of a conflict between this Agreement and such documents the agreement shall control.
- .2 The Construction Manager shall provide the minimum staffing level as set forth in Exhibit B of the General Conditions for this project:
- .3 The Construction Manager shall maintain and prepare monthly updates for all project schedules, including Critical Path elements, provide written progress reports, describe problems and corrective action plan(s) and conduct briefings as required by the Owner. Such information shall be provided to the Owner and Project Consultant in the form of a written report with progress payments requests.
- .4 Subject to Article 3.4.9, the Construction Manager may self-perform certain construction work when it benefits the Owner, results in cost and time savings, and is pre-approved by the Owner in writing.
- .5 The Construction Manager shall coordinate project close-out, operation, and transition to occupancy.
- .6 The Construction Manager shall coordinate with the Project Consultant to provide complete project records including project manual, and electronic Computer Assisted Drafting (CAD) drawings corrected to show all construction changes, additions, and deletions. (Construction Manager shall note all changes on the as-builts for the Project Consultant to reflect on the drawings and CAD disc.)
- .7 The Construction Manager shall coordinate with the Owner's staff to prepare the Certificate of Final Inspection.

- .8 The Construction Manager shall obtain and review all warranties, operations and maintenance manuals and other such documents, for completeness, have them corrected if necessary and submit them to the Owner.
- .9 The Construction Manager shall complete all punch list items generated by the Building Code Inspector (BCI), the Owner, the Project Consultant and any others having jurisdiction over the project, during its inspections.
- .10 If at any time during the course of the Project, Owner determines that the performance of any Subcontractor, member of the Project Team or other member of Construction Manager's staff working on the Project is unsatisfactory, Owner can require Construction Manager to remove such person or entity from the Project immediately and replace such person or entity. Replacements of members of the Project Team or Construction Manager's staff shall be at no cost or penalty to Owner for delays or inefficiencies the change may cause. Construction Manager shall be entitled to request a Change Order for costs and time associated with the replacement of Subcontractors required by Owner.
- .11 Construction Manager shall exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its Subcontractors on the Project shall work in harmony, and be compatible, with all other labor being used on the Project and representatives of Owner. Construction Manager shall include this provision in all contracts with its Subcontractors, and all Subcontractors shall include such provision in their contracts with sub-subcontractors; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work guaranteed by Article I, Section 6 of the Florida Constitution.
- .12 No Contractual Relationship. Nothing contained in this Agreement shall create a contractual relationship between Owner and any other person or entity other than Construction Manager.
- .13 Good Order. The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other persons carrying out Construction Manager's obligations under the Contract Documents. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- .14 Liability. Construction Manager shall be responsible to Owner for acts and omissions of Construction Manager's employees, contractors and their subcontractors, agents and employees, and other persons, including, design professionals, performing any portion of Construction Manager's obligations under the Contract Documents.

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

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

- .2 Where any Work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Owner Occupancy of the Project or a designated portion thereof or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications or by Florida Law. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents.

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

- .4 Refusal of the Construction Manager to provide any work required in the Warranty Phase of the project shall be basis for non-payment of any and all Warranty Phase Fee unpaid at the time of refusal.

ARTICLE 4

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

ARTICLE 5

LIQUIDATED DAMAGES

5.1 LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION

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

_____ dollars, \$_____, per day for each and every calendar day of unexcused delay in

achieving Substantial Completion beyond the date set forth in the contract documents for Substantial Completion of each phase, if phased, or the project, if not phased.

- .2 Owner and Construction Manager acknowledge that any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner as estimated at the time of executing this Contract. If the Owner reasonably believes in its discretion that Substantial Completion will be delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when in the Owner's discretion the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.
- .3 Partial use or occupancy of the Work may not result in the Work being deemed substantially completed, and such partial use or occupancy may not be evidence of Substantial Completion.

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

5.2 LIQUIDATED DAMAGES FOR FINAL COMPLETION:

- .1 If the Construction Manager fails to achieve final completion within 60 days of the date of Substantial Completion, the Construction Manager shall pay the Owner the sum of:
_____ dollars, \$_____, per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for final completion of the Work.
- .2 Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner, as estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.
- .3 Prior to being entitled to receive final payment, and as a condition precedent thereto, the Construction Manager shall provide the Owner, in the form and manner required by Owner, the following:
 - .1 An affidavit that Construction Manager's obligations to all subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
 - .2 Such other documents as required by the Project Manual from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Owner including but not limited to final releases of bond;
 - .3 All product warranties, operating manuals, instruction manuals and other documents

customarily required of the Construction Manager or reasonably required by Owner, including but not limited to those required elsewhere in the Contract Documents, as part of its Project Closeout procedures;

ARTICLE 6 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

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

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

Construction Manager every month to increase or decrease the Buyout / Owner's Savings line of the schedule of values for subcontracts awarded during the period. This adjustment is to be supported by a reconciliation including any and all supporting documentation required by the Owner to verify its accuracy.

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

ARTICLE 7 CONSTRUCTION MANAGER'S FEES

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

Construction Manager's exclusive remedy for such changes in the Work. In the event that the Owner approves a deductive change order for a reduction in the scope of work, the Construction Manager shall deduct Overhead and Profit at the percentage of the cost of work deducted in the change order.

7.2. Construction Manager's Deliverables

.1 General

- .1 Summary Report / Recommendations (Agreement 3.2.1)
- .2 Preliminary Master Project Schedule and monthly updates (Agreement 3.2.2)
- .3 Existing Facility Analysis package, recommendations, Cost Estimates (Agreement 3.2.3)
- .4 Project Delivery options / packaging recommendations report (Agreement, 3.2.5)
- .5 Work Status Monthly Report (Agreement 3.2.6)
- .6 Project Manual (Agreement 3.2.7)
- .7 Market Analysis/sub-contractor report (Agreement, 3.2.8)

.2 Design Phase

- .1 Monthly Summary of project meetings (Agreement 3.3.1)
- .2 Document Reviews / report at each phase (Agreement 3.3.2, 3.3.5, 3.3.6).
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
- .3 Preliminary Master Project Schedule Updates (Agreement 3.3.7)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
- .4 Cost Estimates (Agreement, 3.3.4)
 - Schematic Design
 - Design Development
 - 50% Construction Documents
 - 100% Construction Documents
- .5 Guaranteed Maximum Price (GMP) Manual (Agreement 3.3.12)

.3 Bidding and Award Phase

- .1 Proposed Subcontractor list with MWBE participation (Agreement 3.4.2).
- .2 Bid Packages List, Tabulation Sheet, Bid Support (Agreement 3.4.3)
- .3 Pre-bid conference attendance list and summary report (Agreement, 3.4.4)
- .4 Recommendations for award (Agreement, 3.4.5)
- .5 Schedule of Values (Agreement 3.4.7)
- .6 Buyout Reconciliation (Agreement 3.4.7)
- .7 Executed subcontract agreements (Agreement 3.4.5)

- .4 Construction Phase
 - .1 Monthly Schedule updates and reports (Agreement, 3.5.3)
 - .2 Summary of all meetings (Agreement 3.3.1)
 - .3 Preparation and submission of all close-out submittals (Agreement, 3.5.8)
 - .4 Written verification of punchlist items completion, including BCI items (Agreement, 3.5.9)
 - .5 Schedule of Values (Agreement 8.1).
 - .6 Buyout Reconciliation Updates (Agreement 6.1)
 - .7 Allowance usage log (Agreement 8.5)
 - .8 Contingency usage log (Agreement 8.5)
- .5 Warranty Phase
 - .1 Warranty Summary Report at end of 6 months (50% of Warranty Phase fee) and 11 months (Balance of Warranty Phase Fee) Warranty Phase (Agreement 3.6.3)
- .6 Other Deliverables
 - .1 Insurance Policies (Agreement 8.1.7)
 - .2 Payment Applications (Agreement 8.2 through 8.14)
 - .5 Agreement Execution and Contract Bonds (Agreement 9.1)
 - .6 Closeout documents as set forth in the Contract Documents.
- .7 Final Payment
 - .1 Payment affidavits, release of lien and other requirements (Agreement 8.15)

**ARTICLE 8
PAYMENTS TO THE CONSTRUCTION MANAGER**

- 8.1 Schedule of Values:
 - .1 Before the first Application for Payment for the Work, the Construction Manager shall submit to Owner a schedule of values allocated to various portions of the Work. Construction Manager's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner may, at its option, require. Construction Manager shall not front-end load its Schedule of Values and shall not imbalance its Schedule of Values. The allocated value of each item in the Schedule of Values shall only include its total cost. The Schedule of Values shall be used only as a basis for Construction Manager's Applications for Payment and shall only be so used after it has been approved in writing by Owner.
 - .2 The Construction Manager shall maintain and update the Schedule of Values originally provided to the Owner with the GMP Addendum, as modified for approved Buyout Savings.
 - .3 The Construction Manager's Schedule of Values apportions the GMP among the different

elements of the required Work for purposes of periodic and final payments and shall be submitted as detail in support of the Contractor's monthly Application for Payment.

- .4 The Schedule of Values shall be presented with such detail, and supported with whatever information the Owner reasonably requests as addressed in Article 8.5 of this Agreement.
- .5 The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof.
- .6 The Construction Manager shall supply a Schedule of Values as reflected in his CPM schedule to the OWNER. The Schedule of Values shall be updated monthly, only to reflect all subcontracts, buyouts, approved change orders and change directives.
- .7 No payments shall be made to the Construction Manager prior to the receipt of all insurance policies that are required by this agreement and the work being performed.
- .8 In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any Application for Payment that (i) Construction Manager have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement, and (ii) Construction Manager shall have furnished to Owner, if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of bond, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Owner, at Owner's discretion, may permit Construction Manager to furnish a bond satisfactory to Owner in lieu of such release or waiver indemnifying Owner against such claim. If such claim remains unsatisfied after payments are made, Construction Manager shall refund to Owner all money that Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.
- .9 Withholding Payment. Owner may appropriately adjust Construction Manager's Applications for Payment if Owner reasonably believes that any portion of the Work has not progressed to the point indicated in Construction Manager's Application for Payment, if adequate supporting documentation is not provided as addressed in Article 8.5 of the Agreement, or the quality of the Work covered is not in accordance with the Contract Documents. In addition, Owner may decide not to pay Construction Manager an appropriate amount because of subsequently discovered evidence or subsequent observations, to the extent necessary to protect itself from loss, because of but not limited to: (i) defective Work of which the Construction Manager has knowledge; (ii) third party claims filed or evidence indicating the filing of such claims; (iii) failure of the Construction Manager to make payments to Subcontractors or others for labor, materials or equipment pursuant to Construction Manager's contracts with such persons or entities; (iv) evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price allocable to the Work; (v) damage to Owner or another contractor, caused by Construction Manager or its subcontractors, and not paid by Construction Manager's insurance; (vi) evidence that the Work will not be completed by the Scheduled Final Completion Date, as the same may be adjusted by Modification and that the unpaid balance would not be adequate to cover actual

or liquidated damages for the anticipated delay; or (vii) persistent failure to carry out the Work in accordance with the Contract Documents.

- 8.2 Prompt Payment Act – Payments to the Construction Manager will be made pursuant to the Contract Documents and the Local Government Prompt Payment Act, Chapter 218, Florida Statutes, and any subsequent amendments thereto (“Prompt Payment Act”). To the extent that the provisions of Contract Documents differ with the requirements of the Prompt Payment Act, the provisions of the Prompt Payment Act will govern.
- 8.3 On or before the 25th day of each month after commencement of performance, but no more frequently than once monthly, the Construction Manager may submit an Application for Payment for the period ending the last day of the previous month or other pay period as mutually defined and agreed to by the Construction Manager and Owner.
- 8.4 Said Application for Payment shall be in the format required in the Specification 01290 and include whatever supporting information as may be required by the Owner. Except for Applications for Payment for Design Services and pre-construction services, retainage shall be withheld from each monthly payment request, in an amount not to exceed ten percent (10%) of the approved payment. Pursuant to the requirements of Florida Statutes Section 255.078 (5), upon fifty percent completion, the retainage withheld from future payment applications will be reduced to five percent until the project has reached final completion and accepted by the Owner. Owner may, in Owner’s sole discretion, upon written request of Construction Manager, release portions of the retainage allocable to portions of the Work, which have been finally completed prior to Final Completion for all of the Work. Retainage shall be withheld and released in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act Retainage shall not be withheld on fees as set forth in Article 7.1.
- 8.5 Applications for Payment shall be notarized and supported by such data substantiating Construction Manager’s right to payment as Owner may reasonably require. This shall include, but not be limited to invoices, subcontractor pay applications, subcontractor releases of lien, buyout savings reconciliation, allowance usage log, contingency usage log, and other documents as required by Owner. The format of the Application for Payment shall be the American Institute of Architects G702© certified and notarized by the Construction Manager and supported by the American Institute of Architects form G703© which shall agree to the schedule of values as described in this agreement. The Construction Manager’s final acceptance of the supportability and allowability of the charges submitted in the applications for payment is not inferred through the approval and signature of each monthly pay application that includes the referenced charges.
- 8.6 Each Application for Payment shall be signed by the Construction Manager and shall constitute the Construction Manager’s representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the requirements of the Contract Documents, that the costs being billed have actually been incurred and that the Construction Manager knows of no reason why payment should not be made as requested.
- 8.7 Thereafter, the Owner shall:

- .1 Review the Application for Payment and review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by the Contract Documents.
 - .2 Approve in writing the amount which, in the opinion of the Owner, is properly owing to the Construction Manager.
- 8.8 The amount of each such payment shall be the amount approved for payment by the Owner less such amounts, if any, otherwise owing by the Construction Manager to the Owner or which the Owner shall have the right to withhold as authorized by the Contract Documents.
 - 8.9 The submission by the Construction Manager of an Application for Payment also constitutes an affirmative representation and warranty that all Work for which the Owner has previously paid is free and clear of any lien, or other encumbrance by any person whatsoever.
 - 8.10 As a condition precedent to partial payment, the Construction Manager shall, as required elsewhere in the Contract Documents and as required by the Owner, also provide to the Owner documents relating to the Project, including but not limited to, updated schedules and daily logs, and/or properly executed documents reflecting that all subcontractors, materialmen, suppliers or others having rights, have acknowledged receipt of all sums due pursuant to all prior Payment Requests.
 - 8.11 Furthermore, the Construction Manager warrants and represent that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the Owner.
 - 8.12 Not Used
 - 8.13 When payment is received from the Owner, the Construction Manager shall pay all subcontractors, materialmen, laborers and suppliers the amounts justly due for all Work covered by such payment in accordance with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act. In the event such payments are not made in a timely manner the Owner may, in its discretion, invoke reasonable procedures in order to protect Owner's interest or Owner's desire to assist in having subcontractors, laborers, suppliers, materialmen or others paid. By the Owner invoking reasonable procedures, it shall not relieve the Construction Manager of its responsibilities for payments under the contract.
 - 8.14 It is mutually agreed that any payments made under this Contract, including but not limited to final payment, shall not constitute acceptance of defective or improper materials or workmanship nor shall same act as a waiver or release of future performance in accordance with the Contract Documents.
 - 8.15 Final Payment. Construction Manager's application for final payment shall be accompanied by a completed and notarized Certificate of Contract Completion. Any items required by the Contract Documents not previously submitted shall accompany the Application for Final Payment. Neither final payment nor amounts retained, if any, shall become due until Construction Manager submits to Owner: (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or shall be paid from funds received from Owner; (ii) a certificate evidencing that insurance required by the

Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (iii) a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) consent of surety, if any, to final payment and (v) a final accounting of the Cost of Work. Acceptance of final payment shall constitute a waiver of all claims by Construction Manager.

- 8.16 Within seven (7) days of receipt of payment from the Owner, Construction Manager shall pay each Subcontractor, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payment to Construction Manager on account of such Subcontractor's work. The Construction Manager will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 8.17 Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner in writing.
- 8.18 Withholding Payments to Subcontractors. The Construction Manager shall not withhold payments justly due to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and project bookkeeping as required. Payments to subcontractors shall comply with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act.
- 8.19 Warranty Payments. To the extent a percentage of Construction Manager's fee or a dollar amount is due for services rendered during the warranty phase, Construction Manager shall receive 50% of said fee if the six (6) month warranty inspection work is satisfactorily completed and the balance due if the eleventh (11th) month warranty inspection work is satisfactorily completed.
- 8.20 Delayed Payments by Owner. Payments will comply with Section 218.70, Florida Statutes, and other relevant provisions of the Local Government Prompt Payment Act, as amended.
- 8.21 Underpayment by Construction Manager. If, in the performance of the Agreement, there is underpayment of moneys due from Construction Manager to consultants, Subcontractors, materialmen, laborers or suppliers, Owner may, at its option, withhold from Construction Manager, out of payments due it, an amount sufficient to pay to consultants, Subcontractors, materialmen, laborers or suppliers underpaid the difference between the amounts required to be paid to such consultants, Subcontractors, materialmen, laborers or suppliers and the amounts actually paid. The amounts withheld shall be disbursed by Owner to the respective consultants, Subcontractors, materialmen, laborers or suppliers to whom they are due, provided Owner shall consult with Construction Manager before disbursing such amounts to determine whether there are any outstanding disputes between Construction Manager and such persons or entities justifying the withholding of such amounts.
- 8.22 Right to Require Documentation and Audit. Owner may, as deemed necessary, require from the Construction Manager, support and documentation for any submission, including but not limited to applications for payment. Upon execution of this Agreement, the Construction Manager agrees that Owner shall have unrestricted access during normal working hours to all of Construction Manager's records relating to this project including but not limited to hard copy as well as electronic records for a period of three years after final completion.

**ARTICLE 9
CONTRACT BONDS**

- 9.1 The Agreement shall become effective and in full force only upon the execution of this agreement. The payment and performance bonds issued by a Surety Company acceptable to Owner in its sole discretion, such Surety being qualified and rated in accordance with the General Conditions, and approved by the United States Treasury Department and licensed to do business in the State of Florida shall be delivered with the executed GMP Addendum.
- 9.2 The GMP Addendum must be executed and signed by a resident agent having an office in Florida, representing such Surety Company, for one hundred per cent (100%) of the Contract price, said bond guaranteeing the performance of this Agreement and as security for the payment of all persons performing labor and providing materials in connection with this Contract.
- 9.3 The form of Bonds required is included in Article 29 of the General Conditions. This is in addition to any bonds of subcontractors or others.

**ARTICLE 10
NOTICES**

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

Party:		Address:
Owner:	SUPERINTENDENT OF SCHOOLS The School Board of Broward County, Florida	600 Southeast Third Avenue Fort Lauderdale, FL 33301 Attn: Mr. Robert Runcie
With Copy To:	Executive Director, Capital Programs	Office of Facilities & Construction 2301 NW 26th Street, Bldg 6, Oakland Park, FL 33311 Attn: Mr. Frank Girardi
	Director, Procurement & Warehousing Services	Procurement & Warehousing Services 7720 W. Oakland Park Blvd, Suite 323 Sunrise, FL 33351 Attn: Mary Coker
Construction Manager:	BBBBB	BBBBB BBBBB BBBBB
Surety:	BBBBB	BBBBB BBBBB BBBBB

Surety's Agent:	BBBBB	BBBBB BBBBB BBBBB
Project Consultant:	BBBBB	BBBBB BBBBB BBBBB

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

**ARTICLE 11
AUTHORITY PROVISION**

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

**ARTICLE 12
NON-DISCRIMINATION PROVISION**

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

**ARTICLE 13
CAPTION PROVISION**

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

**ARTICLE 14
ASSIGNMENT PROVISION**

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

**ARTICLE 15
EXCESS FUNDS PROVISION**

15.1 Excess Funds – Any party receiving funds paid by The School Board of Broward County, Florida under this

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

ARTICLE 16 BACKGROUND SCREENING

- 16.1 Background Screening – Construction Manager agrees to comply with all requirements of Sections 1012.32, 1012.465 and 1012.467, Florida Statutes, as amended from time to time, and that Construction Manager, its agents, subcontractors and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by Owner in advance of Construction Manager or its personnel providing any services under the conditions described in the previous sentence. Construction Manager will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Construction Manager and its personnel. The Parties agree that the failure of Construction Manager to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Owner to terminate immediately for cause with no further responsibilities to make payment or perform any other duties under this Agreement.

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

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

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

imposed upon Construction Manager pursuant to Article 30 of the General Conditions and the laws of Florida.

ARTICLE 17
CONSULTANTS COMPETITIVE NEGOTIATION ACT

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

ARTICLE 18
COMPLIANCE WITH SCHOOL CODE

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

ARTICLE 19
PUBLIC RECORDS LAWS

- 19.1 This Agreement shall be subject to Florida’s Public Records Laws, Chapter §119.011 et. Seq., Florida Statutes. Construction Manager understands the broad nature of these laws and agrees to comply with Florida’s Public Records Laws and laws relating to records retention. Construction Manager shall keep records to show its compliance with program requirements. Construction Manager and its sub-contractors must make available, upon request of Owner, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the Construction Manager which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Construction Manager shall retain all records for three (3) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1), and for a period of five (5) years. Exempt or confidential information shall not be disclosed unless authorized by law; Construction Manager shall destroy any duplicate records which are exempt from public records disclosure as set forth in Chapter 119. Upon termination of

this agreement all public records in possession of Construction Manager must be transferred to Owner at no cost. If records are stored electronically the records must be provided in a compatible format to Owner's operating system.

ARTICLE 20 TAXES AND DIRECT OWNER PURCHASE OPTION

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

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

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

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

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

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

10. Delivery dates;
11. Delivery instructions;
12. Vendor identification number;
13. Mailing address for invoices.

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

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

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

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

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

releases, warranties and supporting documentation have been attached to the invoice before forwarding the invoice to Owner for processing and payment. The Construction Manager also is responsible for obtaining from the Manufacturer/Supplier all operating information and manuals, spare parts and all other items required to be provided by the Manufacturer/Supplier. The Construction Manager shall review all such items for compliance with the requirements of the Contract Documents and shall organize and deliver all such items to Owner as part of its requirements for achieving Substantial Completion of the Work.

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

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

In witness thereof, the said _____ (Construction Manager), and

the Owner, The School Board of Broward County, Florida have caused this Agreement to be executed and their corporate seal affixed by and through their proper offices, thereunto duly authorized, on this day and year first above written.

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(SEAL)

ATTEST THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

By: _____
Robert W. Runcie, Superintendent of Schools

By: _____
Donna P. Korn, Chair

APPROVED AS TO LEGAL FORM AND CONTENT:

Office of the General Counsel

FOR CONSTRUCTION MANAGER

(Corporate Seal)

(ATTEST)

(Type Name of Firm Here)

Legal Name of Corporation

, President

Attest Secretary

-OR-

Witness

Witness

STATE OF FLORIDA
COUNTY OF BROWARD

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

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2020.

Notary Public State of Florida (SEAL)

My Commission Expires:

ACKNOWLEDGMENT

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

SURETY:

By: _____

Its: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed and sworn to by

_____ before me this _____ day of _____, _____.

My commission expires:

(SEAL)

Signature – Notary Public

Printed Name of Notary

Notary’s Commission No.

EXHIBIT A
TO CONSTRUCTION MANAGER AT RISK AGREEMENT

GMP AMENDMENT

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

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

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

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

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

.1 The Owner and the Construction Manager acknowledge and agree that the Owner will suffer damages if the Construction Manager fails to achieve Substantial Completion of the entire Work, as defined in the Contract Documents, on or before the expiration of the Contract Time, which damages are difficult, if not impossible, to ascertain with any degree of certainty. Accordingly, if the Construction Manager fails to achieve Substantial Completion of the entire Work for this Project on or before the expiration of the Contract Time, liquidated damages (which are not intended as a penalty) shall be assessed against the Construction Manager in an amount of five hundred dollars (\$500) per calendar day.

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

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

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

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

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

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

place of this Project.

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

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

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(SEAL)

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

By: _____
Robert W. Runcie, Superintendent of Schools

By: _____
Donna P. Korn, Board Chair

APPROVED AS TO LEGAL FORM AND CONTENT:

Office of the General Counsel

(Corporate Seal)

(ATTEST)

(Type Name of Firm Here)

Legal Name of Corporation

President, (Type Name Here)

Secretary, (Type Name Here)
(Type Registration Number Here)
Project Consultant's
Registration Number

Witness (Type Name Here)

Witness (Type Name Here)

SAMPLE

ACKNOWLEDGEMENT

**STATE OF FLORIDA
COUNTY OF BROWARD**

BEFORE ME this _____ day of _____, _____, appeared _____, and, _____

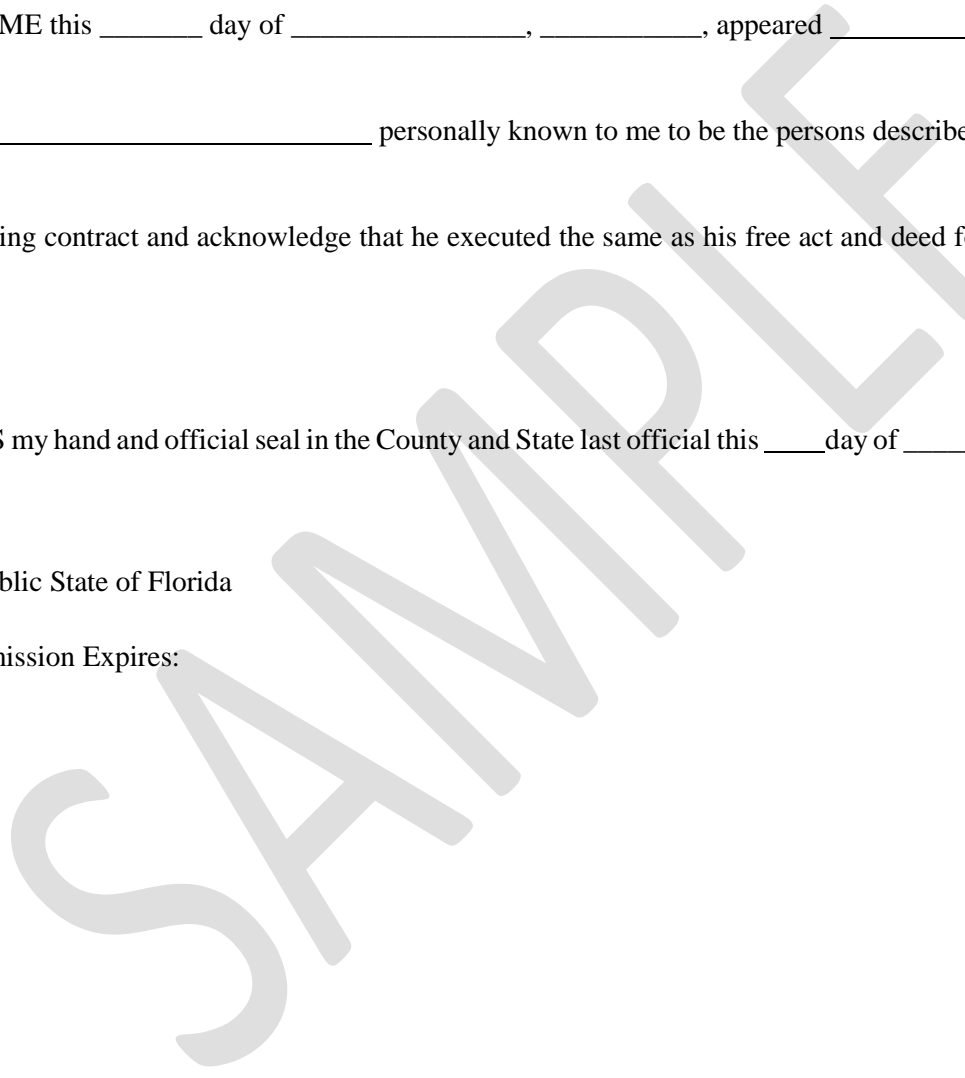
_____ personally known to me to be the persons described in and who executed the foregoing contract and acknowledge that he executed the same as his free act and deed for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last official this _____ day of _____,

201_.

Notary Public State of Florida

My Commission Expires:



ATTACHMENTS

ATTACHMENT I - CONTRACT DOCUMENTS - THE DRAWINGS

ATTACHMENT II - CONTRACT DOCUMENTS - THE SPECIFICATIONS

ATTACHMENT III - CONTRACT DOCUMENTS - ADDITIONAL CONTRACT DOCUMENTS

ATTACHMENT IV - CONTRACT DOCUMENTS - SALARY AND WAGE SCHEDULE

ATTACHMENT V - CONTRACT DOCUMENTS - THE CONSTRUCTION SCHEDULE

END OF EXHIBIT "A"

EXHIBIT B

LUMP SUM FEE BY TASK

Construction Management at-Risk for

_____ **AT**

RFQ NO. / PROJECT NO. _____

FIRM NAME:	NAME/ADDRESS
DATE:	_____ (_____ MEETING)

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

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

EXHIBIT C

Construction Manager's Proposal

To be added at contract execution

SAMPLE

EXHIBIT D
CMAR RFQ Document

To be added at contract execution

SAMPLE

GENERAL CONDITIONS OF THE CONTRACT CONSTRUCTION MANAGEMENT AT RISK

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ARTICLE 1 DEFINITIONS

- 1.1 The Chief Facilities Officer, Facilities and Construction - 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 Facilities Officer.
- 1.2 Construction Manager - The "party of the second part", of the Contract. The person, firm or corporation with whom a contract has been made with the Owner for the performance of the Work defined by the Contract Documents.
- 1.3 Contract Documents - The Contract Documents, which constitute the entire agreement between Owner and Construction Manager, consist of the CMAR Agreement Form and all exhibits thereto, the Proposal and all attachments and supporting documentation submitted by the Construction Manager in response to the Request for Qualifications/Proposals, requirements pursuant to Chapter 287, Florida Statutes on Public Entity Crimes, these General Conditions, all Addenda, and the Project Consultant's Agreement with the SBBC. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those listed above, those identified by the GMP Amendment and the Design Documents attached thereto, including but not limited to the Project Manual, Drawings, Specifications, any other General and Supplementary Conditions (Divisions 0 and 1), and all modifications issued after execution of the Contract.
- 1.4 Estimate - The Construction Manager's latest estimate of probable project construction costs.
- 1.5 Office of Facilities and Construction - The Owner's organizational entity which acts as liaison between the Consultant and Owner and provides day to day management and other professional services on the Owner's behalf.
- 1.6 Inspector of Record: See Article 1.1.29 of General Conditions.
- 1.7 Final Completion - Means that date subsequent to the date of Substantial Completion at which time the Construction Manager has completed all of the Work (or designated portion thereof) in accordance with the Contract Documents as certified by the Project Consultant and/or approved by the Owner. In addition, Final Completion shall not be deemed to have occurred until any and all governmental bodies, boards, entities, etc., which regulate or have jurisdiction of the Work, have inspected, approved and certified the Work and issued a certificate of occupancy or other required documentation.
- 1.8 Fixed Limit of Construction Cost (FLCC): (See also 1.1.14) the Fixed Limit of Construction Cost, referred to hereinafter as FLCC, is the total dollar value of the Construction Manager's fees, contingency, and cost of the work.
- 1.9 Guaranteed Maximum Price: The GMP is the maximum amount of money that the Owner shall pay the Construction Manager for all the work described in the contract documents.
- 1.10 Journeyman: A person working in an apprenticeable occupation who has successfully completed a state registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation. "Established industry practices" means the number of years of training required by the majority of registered program

standards for the particular trade or occupation. A "certified Journeyman" is a journeyman who holds a State of Florida Certification or Broward County Certificate of Competency for a particular trade or craft."

- 1.11 Notice to Proceed - The term Notice to Proceed shall mean a written work order based on a defined scope of work, prepared by the Facilities Project Manager and issued to the Construction Manager.
- 1.12 Owner - The School Board of Broward County, Florida. The School Board of Broward County, Florida, through its Board, must approve all Agreements, changes in the scope of work, change orders, fees, final acceptance of the project, final payment and use of the contingency as set forth in Article 6.1 of the Agreement between Owner and Construction Manager.
- 1.13 Owner's Representatives - An entity hired by the School Board of Broward County to execute the delivery of projects and act as the Owner's Representative.
- 1.14 Owner's Construction Budget: Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is identified in the RFQ, including all contingency, Construction Manager fees, and costs of the work. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 6 of the Agreement between the Owner and Construction Manager.
- 1.15 Other Contractors - Any person, firm or corporation with whom a Contract has been made by the Owner for the performance of any work on the site, which work is not a portion the Work covered by the Contract.
- 1.16 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 for development of the design and Contract Documents for the work of this Project and, any additional services as may be required during the construction and warranty phase.
- 1.17 Project Manager - A person who is designated by the Chief Facilities Officer to provide direct interface with the Construction Manager with respect to the Owner's responsibilities.
- 1.18 Project - The Project is the total scope of services and work to be performed under this Agreement. The Project consists of planning, design, permitting, construction and code inspection necessary to build the component parts of the project identified in project manual.
- 1.19 Phase - A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors.
- 1.20 Punch List - A list of items of work required by the Contract Documents which after inspection by the Owner and the Construction Manager has been termed to be deficient and/or inconsistent with the Contract Documents.
- 1.21 Subcontractor - A person or entity other than a materialman or laborer who enters into a Contract with Construction Manager for the performance of any part of Construction Manager's Work during the Construction Phase. The term "Subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Subcontractor or an authorized

representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

- 1.22 Sub-subcontractor - A person or entity other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract. The term "Sub-subcontractor" is referred to throughout the Construction Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include separate subcontractors of a separate contractor.
- 1.23 Submittals - Are prepared by the Construction Manager or those working on his behalf (subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. The Construction Manager's submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.
- 1.24 Substantial Completion - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the work performed by Construction Manager 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 shall not be the sole factor in determining whether substantial completion has been achieved.
- 1.25 Subconsultant - A person or organization of properly registered professional architects, engineers or other professionals who have entered into an agreement with the Owner or Construction Manager to furnish professional services to the project during the Pre-Construction Phase.
- 1.26 Superintendent or Construction Manager's Project Manager - The executive representative for the Construction Manager 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 superintending the work efficiently as designated.
- 1.27 Superintendent of Schools - The duly appointed executive officer of the Owner authorized to act by and through the School Board of Broward County.
- 1.28 Surety - The firm, corporation, or individual which is bound by the Contract Bond with and for the Construction Manager, and which engages to be responsible for the Construction Manager's acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.29 Building Code Inspector: Employees of The School Board of Broward County, Florida, who are certified by the Florida Department of Education (DOE). BCI's may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager and Project Consultant. Any references to "UBCI" within any documents shall mean BCI.
- 1.30 Work - The totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute

the whole or a part of the Project.

- 1.31 Written Notice - Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to him who gives notice. Electronic, FAX or other telephonic transmission shall not be considered as written notice.
- 1.32 Contingency Use Directive (CUD) – A CUD is issued and approved by the Owner for the purpose of accounting for unforeseen increases or decreases in the construction cost and/or to be utilized for unforeseen circumstances as set forth in Article 6.1 of the Agreement.
- 1.33 Change-Order – A change order is issued and approved by the Owner for additions or deletions in the scope of work or services provided by the Construction Manager. A change order shall increase or decrease the GMP subsequent to approval of the final GMP.
- 1.34 Construction Change Directive (CCD) – A CCD is issued and approved by the Owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner’s sole discretion.
- 1.35 Design Documents – All the design documents approved by Owner pursuant to the Contract Documents, including, without limitation, those for use in construction of the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, the Schematic Design Documents, the Design Development Documents and the Construction Documents.
- 1.36 Modifications – means a Change Order or written amendment to this Agreement signed by both the Construction Manager and the Owner, or a Construction Change Directive issued by Owner.
- 1.37 Other Definitions – All terms that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.38 Prior Written Consent – consists of a written response from Owner noting acceptance. Acceptance is not inferred through the approval and signature of monthly pay applications that include the referenced items.
- 1.39 Buyout Savings - the difference, either positive or negative, between the line item amounts in the Board approved guaranteed maximum price (GMP) and the total sum of all contractual obligations between the construction manager and his subcontractors and vendors, self-performed work and unpurchased scope for that line item

ARTICLE 2
COORDINATION AND CORRELATION OF
DRAWINGS AND SPECIFICATIONS.

2.1 The Construction Manager represents that:

- .01 The Construction Manager and Subcontractors will fully examine and compare all Drawings, Specifications and other Contract Documents including but not limited to those relating to the

architectural, structural, mechanical, electrical, civil engineering and plumbing elements and have compared and reviewed all general and specific details on the Drawings and the various technical and administrative requirements of the Specifications.

- .02 With respect to all construction materials, labor, methods, means, techniques, and sequence of procedures required to carry out the Work or safety precautions and programs required in connection with carrying out the Work, all conflicts, discrepancies, errors and omissions that Construction Manager is aware of as a result of the examination and comparison of the Contract Documents have been communicated to the Owner and Project Consultant in writing.
 - .03 The Contract Sum is reasonable compensation and represents the total lump sum cost for the Work and that all systems and Work shall be in accordance with the requirements of the Contract Documents.
 - .04 The Contract Time is adequate for the performance of the Work.
- 2.2 The Construction Manager is responsible for all means, methods, techniques and sequencing of construction.
- 2.3 If, after execution of this Construction Contract, the Construction Manager detects a conflict, discrepancy, error or omission in the Contract Documents then it shall immediately notify Project Consultant and Owner's representative prior to proceeding with the specific portion of the Work.

ARTICLE 3 INTENT AND INTERPRETATION.

- 3.1 With the respect to the intent and interpretation of this Contract, the Owner and the Construction Manager agree as follows:
- .01 The Construction Manager shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract and shall immediately give written notice to the Owner and the Project Consultant of any conflict, ambiguity, error or omission which the Construction Manager may find with respect to these documents before proceeding with the affected Work.
 - .02 It is the intent of Owner and Construction Manager that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all: performance by Construction Manager shall be required to the full extent consistent with and reasonably inferable from, the Contract Documents as being necessary to produce the results called for in Owner's program for this Project..
 - .03 The intent of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Work. The Construction Manager shall continually refer to drawing, specifications and other Contract Documents in this regard.
 - .04 In the event of any conflict, discrepancy, or inconsistency amongst any of the Contract Documents, the following shall control:
 - a) As between figures given on plans and scaled measurements, the figures shall govern;
 - b) As between large scale plans and small scale plans, the large scale plans shall govern;

- c) As between plans and specifications, the requirements of the specifications shall govern;
- d) As between this Agreement and the plans and specifications, this Agreement shall govern.

3.2 The Owner shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder and may involve the Project Consultant with specific interpretations. This provision does not relieve the Project Consultant from their contractual obligations to the Owner.

.01 The Owner shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of the Construction Manager, and shall render written decisions, within a reasonable time, on all claims, disputes, change order requests, substitution requests, requests for interpretation and other matters in question relating to the execution or progress of the Work or the interpretation of the Contract Documents.

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

4.1 Subject to any rights the Project Consultant may have in its Professional Services Agreement with Owner, all of the Contract Documents, as well as any other documents, intellectual property, software, computer-assisted material or disks relating to or regarding the Work, shall be and remain the property of the Owner. This shall be the case even if prepared, created or provided by the Project Consultant, Construction Manager, Subcontractor or others.

4.2 The Construction Manager shall have the right to keep a copy of the Contract Documents upon completion of the Work; provided, however, that in no event shall the Construction Manager use, or permit to be used, any portion or all of the Contract Documents on other projects without the Owner's prior written authorization.

4.3 The Construction Manager agrees to provide any and all items referred to in this Article to Owner upon demand by Owner. In the event Construction Manager fails to provide the requested Contract Documents to Owner as demanded, Construction Manager acknowledges that the Owner will need the requested documents or information and will be irreparably harmed and the Construction Manager will be subject to an injunction to provide same.

ARTICLE 5 TEMPORARY UTILITIES:

5.1 Water For Building Work: The Construction Manager shall provide temporary water lines sufficient to supply all water needed for the construction and other services required by the Contract Documents and shall pay for all service connections and water used by the Construction Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.

5.2 Electrical Energy: The Construction Manager shall provide temporary electrical energy and power lines sufficient to supply all electricity needed for the construction and other services required by the Contract Documents and shall pay for all service connections and electricity used by the Construction Manager or Subcontractors unless the contrary is provided for elsewhere in the Contract Documents.

5.3 Temporary Sanitary Facilities And Sewers: The Construction Manager shall provide and maintain in a neat and sanitary condition such accommodations and facilities for the use of his employees as may

be necessary to comply with the regulations of any governmental agencies, departments, etc. which address or govern these issues.

- .01 No nuisances will be permitted.
- .02 Upon completion of Work, such facilities shall be removed and the premises left in a sanitary condition.
- .03 Construction Manager is not permitted to use restrooms or other sanitary facilities within the Owner's existing building or on-site facilities unless the contrary is provided for elsewhere in the Contract Documents.

ARTICLE 6 OWNER OCCUPANCY

- 6.1 The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project in such conditions as will satisfy Owner operational requirements.
- 6.2 Construction Manager shall coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.
- 6.3 The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and shall provide required operational training, in equipment use, for building operators.
- 6.4 The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.
- 6.5 The Construction Manager shall continuously review and maintain As-Built Drawings.
- 6.6 The Owner will not occupy or take control of the project until the above items discussed in this paragraph have been completed and the Substantial" Completion and Warranty requirements have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection six months after Owner Occupancy.

ARTICLE 7 JOB-SITE FACILITIES

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

**ARTICLE 8
CONSTRUCTION MANAGER'S STAFF**

- 8.1 The Construction Manager shall provide site personnel that are competent, English speaking and are able to communicate effectively.
- 8.2 The Construction Manager shall remove within fifteen (15) days, at the written request of the Owner's project manager or Chief Facilities Officer, any of Construction Manager's personnel who are deemed detrimental to the efficient management and completion of the project. Determination of whether an employee is detrimental is at the sole discretion of the Owner or its representatives.

**ARTICLE 9
LINES OF AUTHORITY**

- 9.1 The Construction Manager shall establish and maintain lines of authority for his personnel, and shall provide an organizational chart to the Owner and all other affected parties such as the Building Code Inspectors (BCI) of the Permitting Authority, the sub-contractors, the Project Consultant and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner's representative may attend meetings between the Construction Manager and his Subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to direct the subcontractor.

**ARTICLE 10
SCHEDULE AND PROJECT MANUAL PROVISIONS**

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

**ARTICLE 11
QUALITY CONTROL**

- 11.1 The Construction Manager shall develop and maintain a program, acceptable to the Owner, to assure quality control of the construction. It shall supervise the work of all subcontractors providing

instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work.

ARTICLE 12 LICENSE AND PERMITS

- 12.1 All licenses necessary to commence and prosecute the Work to completion shall be procured and paid for by the Construction Manager or his subcontractors.
- 12.2 Educational facilities constructed by The School Board of Broward County, Florida are exempt from all county, district, municipal or local building codes and ordinances; therefore building permits will not be required. However, any and all other permits, bonds and/or other fees required for Work to be performed, including but not limited to Work in public right-of-ways and other Work otherwise outside the Owner's property line will be procured and paid for by the Construction Manager and will be considered part of the costs of the project.
- 12.3 All easements and rights-of-way will be procured and paid for by the Owner unless otherwise specifically provided within the Contract Documents.

ARTICLE 13 JOB SITE REQUIREMENTS

- 13.1 The Construction Manager shall perform or provide for each of the following activities as a part of his Construction Manager's fee:
 - .01 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.;
 - .02 Maintain a roster of companies on the project with names and telephone numbers of key personnel;
 - .03 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline;
 - .04 Provide labor relations management for a harmonious, productive project;
 - .05 Provide a safety program for the project to meet OSHA requirements;
 - .06 Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice;
 - .07 Provide a quality control program as developed under Article 11.1 herein above;
 - .08 Miscellaneous office supplies that support the construction efforts which are consumed by his own forces;
 - .09 Travel to and from his home office to the project site.
- 13.2 The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
 - .01 Schedule the services of independent testing laboratories (Selected and in privity of contract with the Owner) and provide the necessary testing of materials to ensure conformance to contract requirements;
 - .02 The printing and distribution of all required shop drawings.

ARTICLE 14
RESPONSIBILITY FOR WORK SECURITY

- 14.1 Construction Manager shall at all times conduct all operations under the Construction Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property.
- 14.2 Construction Manager shall promptly take such reasonable precautions as are necessary and adequate against any conditions which involve risk of a loss, theft or damage to its property.
- 14.3 Construction Manager shall continuously inspect all of its Work, materials, equipment and facilities to discover and determine any such conditions and shall be responsible for discovery, determination and correction of any such condition.
- 14.4 Construction Manager shall comply with all applicable laws and regulations in performance of the work.
- 14.5 Construction Manager shall cooperate with Owner on all security matters as set forth elsewhere in the Contract Documents and shall promptly comply with any project security requirements established by Owner.
- 14.6 These security requirements may be more stringent in the event portions of the facilities or project are occupied or otherwise being used.
- 14.7 Such compliance with these security requirements shall not relieve Construction Manager of its responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner Construction Manager's obligation to undertake reasonable action as required to establish and maintain secure conditions at the site.
- 14.8 Construction Manager shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to Owner in a timely manner.

ARTICLE 15
SAFETY, PROTECTION OF WORK AND PROPERTY

- 15.1 Construction Manager shall be responsible for conducting all operations under this Construction Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. Construction Manager shall continuously and diligently inspect all work, material and equipment to discover any conditions which might involve such risks and shall be responsible for discovery and correction of any such conditions.
 - .01 The Construction Manager, subcontractors and their employees shall prohibit the use of alcoholic beverages, smoking inside buildings and/or not in designated areas, food or beverages inside buildings, and carrying of firearms or weapons on school district property or be subject to removal and termination of subject employee.
- 15.2 Safety Precautions and Programs:
 - 01 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance on the Contract.

- .02 In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or other hazardous materials which has not been rendered harmless, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner and Project Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written notice from the Owner. The Work in the affected area shall be resumed in the absence of asbestos, polychlorinated biphenyl (PCB) or other hazardous materials, or when it has been rendered harmless, by written agreement of the Owner, Construction Manager and Project Consultant.
- .03 The Construction Manager shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl: (PCB) or other hazardous materials.

15.3 Safety of persons and Property.

- .01 The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - a) Employees on the Work and other persons who may be affected thereby;
 - b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or Sub-subcontractors; and
 - c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- .02 The Construction Manager shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety or person or property or their protection from damage, injury or loss.
 - a) The Construction Manager and his Subcontractors shall comply with and conform in all respects to the standard set forth in the Occupational Safety and Health act (OSHA) of 1970.
 - b) The Construction Manager shall prominently post and maintain at the job sites;
 - c) OSHA 200: Log and summary of occupational injuries and illness.
 - d) OSHA 2203: Provisions of the Act poster.
- .03 The Construction Manager shall implement and maintain a continuing safety program applicable to all Construction Manager's employees, Subcontractors, and Sub-subcontractors, to include:
 - a) Designating a responsible member of the Construction Manager's organization at the site as the Construction Manager's Safety Officer whose duty shall be the prevention of accidents, safety inspections, and accident documentation. This person shall be the Construction Manager's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Project Consultant.
 - b) Holding weekly safety meetings with employees and Subcontractors,

- c) Implementing OSHA Voluntary Protection Programs.
 - d) Ensuring the presence of an American Red Cross (or other organization acceptable to the Owner) certified Cardiopulmonary Resuscitation (CPR) and first-aid trained individual on site at all times.
 - e) Compliance with the Drug Free Work Place Act of 1998, the Federal Omnibus Transportation Employee Testing Act of 1991, and the certification of compliance with the same as required by the Owner in Document 00457, Drug-Free Workplace Certification.
 - f) Erecting and maintaining reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
 - g) Ensuring that employees are not discriminated against or discharged for filing reasonable safety or health complaints or for otherwise exercising their right in these regards.
- .04 When use of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- .05 The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Construction Manager, Subcontractor or a Sub-subcontractor, or anyone directly or indirectly employed by an of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible, except damage or loss attributable to acts or omissions of the Owner or Project Consultant or anyone directly employed by either of them, or by anyone of whose acts either of them may be liable, and not attributable to the fault of negligence of the Contractor.
- .06 The Construction Manager shall not occupy or permit any part of the construction site to be occupied so as to endanger its safety.
- .07 Building materials, Construction Manager's equipment and other supplies may be stored on the premises, but the placing of same shall be in substantial, watertight storage sheds upon the premises where directed in which it shall store all materials which would be damaged by weather. This shall in no manner relieve the Construction Manager from full responsibility for such materials. Sheds and other storage structures must be secured and anchored in a manner sufficient to withstand hurricane force winds as defined by applicable codes but not less than a 120 mile per hour wind uplift force. Construction Manager shall provide engineering or other evidence to prove compliance, if requested by the Owner.
- .08 Construction Manager shall remove graffiti without damage to substrate or paint over graffiti within forty-eight (48) hours of its discovery.
- 15.4 Emergencies: In an emergency affecting safety of persons or property, the Construction Manager shall take all reasonable and necessary actions, to prevent damage, injury or loss.
- 15.5 Construction Manager, as part of their safety plan, shall be required to provide a complete copy of all accident reports to Owner within five (5) days of any reported accident.

**ARTICLE 16
MATERIALS**

- 16.1 The Construction Manager shall provide materials and equipment as required in the Contract Documents. No substitution will be permitted except in the instance where a material is no longer available during the progress of the Work or is deemed by the Owner to be no longer suitable or appropriate for incorporation into the Work or for obvious economic benefits accruable to the Owner or as otherwise approved by the Owner in writing.
- 16.2 Any such substitution must be approved in writing by the Project Consultant and Owner prior to incorporation of the proposed substitution into the Work.
- 16.3 Proposed substitutions must be submitted for consideration from the Construction Manager to the Project Consultant and the Owner. Documentation for the proposed substitution must include, but is not limited to substantiation of the Construction Manager's efforts to obtain the originally specified materials including documentary evidence from the original materials' manufacturer that such materials are not available.
- 16.4 Product delivery lead times shall not serve as a basis for any substitution request except for where approved in advance by the Owner. All additional costs incurred by the Owner as the result of any substitution shall be the responsibility of and borne by the Construction Manager.
- 16.5 The Construction Manager shall make written request to the Project Consultant and Owner for and obtain his written approval of the use of any materials proposed for use when "approval" materials are specified or a performance type specification is utilized without mentioning any standard by name.
- 16.6 If, in the opinion of the Construction Manager, a specified product or equipment no longer meets the quality of the products or equipment required for the Work, Construction Manager shall request a Change Order Proposal for modifying the Contract to incorporate the respective changes to the Work required, the Contract amount, and the Contract Time as beneficial to the Owner.

**ARTICLE 17
WORKFORCE COMPOSITION**

- 17.1 The following requirements apply to all aspects of the Work where skilled crafts or trades are to be utilized:
- 17.2 The ratio of journeymen utilized shall be two (2) journeymen to one other worker. When two (2) workers involved in the crafts are employed, the first employed shall be a journeyman, and the second may be either a journeyman or a worker.
- 17.3 The Construction Manager shall utilize at least one certified journeyman that holds a State of Florida Certification or a certificate of competency obtained through a proctored examination in Broward County for the respective crafts or trades required for the execution of the Work.
- 17.4 For trades or crafts for which licenses or Certificates of Competency are required in Broward County, no Work may be performed or person employed as a worker in that trade unless the Work is under the direct supervision of a master or certified journeyman, certified in that trade. A certified master or certified journeyman shall not provide direct supervision to more than three (3) other workers or

uncertified journeymen at a job site.

- 17.5 The Construction Manager shall post on the inside of the Construction Manager's on-site project office and maintain by monthly updating a current list, available for the Owner and Project Consultant's use, of the names, areas of specialty, and license or certificate numbers, or all journeymen, certified journeymen, and certified masters utilized for prosecution of the Work, including those used by Subcontractor.
- 17.6 Work shall not commence in a particular trade or specialty until the Construction Manager's posted list has been updated to include that particular trade or specialty.
- 17.7 The Owner will not consider requisitions for payment for Work completed by a particular trade or specialty unless Journeymen, certified Journeymen, or certified Masters of that respective trade or specialty have been properly included on the Construction Manager's posted list.
- 17.8 The format for the posted list should begin with the Construction Manager's company name; name of qualifier with their certificate or registration number; a listing of all the Construction Manager's employee names, work trade and work skill; journeymen with their license number or certificate of competency; or a designation as unskilled labor. The remainder of the list should follow the same format listing all the subcontractors and any other person performing labor on the project site. A copy of all licenses, certificates, registrations, and state registered apprenticeship documents should be kept on file in the Construction Manager's field office to substantiate his posted list.
- 17.9 Requirements for workforce quality specified above do not apply to those elements of the Work requiring only unskilled labor.
- 17.10 The Construction Manager shall employ no illegal aliens or other individuals not properly registered with and allowed to work by the United States Immigration and Naturalization Service (INS).
- 17.11 Construction Manager shall be assessed, and the Owner may deduct from each applicable Application for Payment, \$250 per day for failure to comply with these workforce composition requirements contained herein beginning three days after written notice of non-compliance is received by the Construction Manager.

ARTICLE 18
INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP.

- 18.1 All material and equipment provided and work performed shall be properly inspected by Construction Manager, and shall at all times be subject to quality surveillance, inspections, observations or quality audit by Owner, Facilities Project Manager and any inspectors conducting an inspection pursuant to code, law, regulations, etc.
- 18.2 Construction Manager shall provide safe and adequate facilities, and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit.
- 18.3 The Construction Manager shall permit and facilitate inspection of the Work by the Owner, Project Manager and Inspectors for any governmental agency, authority, or board including but not limited to Uniform Building Code Inspectors (BCI).
- 18.4 Owner also reserves the right to designate others such as consultants, commissioning authorities, test

and balance agents, forensic specialists, etc. to conduct inspections during or subsequent to the Work as Owner in its discretion desires.

- 18.5 Owner shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its Subcontractors for such quality surveillance, observation or quality audit and to determine the status of the Work.
- 18.6 In the event the Owner requires a factory inspection, the Construction Manager shall notify the suppliers that the material shall not be produced or fabricated without due notice to the Owner and an opportunity for such inspection.
- 18.7 If any designated Work should be covered up without approval or consent of the Owner, it must, if required by the Owner, be uncovered for examination at the Construction Manager's expense.
- 18.8 If any material, equipment or workmanship is determined by Owner or Inspector either during performance of the Work or on final quality surveillance, or during any applicable warranty period, to be defective or not complying with the requirements of this Construction Contract, Owner or Inspector will notify Construction Manager in writing that such material, equipment or portions of the Work is rejected and Owner reserves the right to withhold payment on any such item or seek compensation from Construction Manager for same. Thereupon, Construction Manager shall, at its own expense, immediately remove, replace or correct such defective material, equipment or portions of the Work by making the same comply strictly with all requirements of the Contract Documents. The Construction Manager shall be responsible for the costs of any additional site observations, special inspections and/or testing, or other activities of the Owner made necessary by the correction of such defective materials, equipment or portions of the Work.
- 18.9 Neither the failure to make such quality surveillance, observation or quality audit, nor to discover defective workmanship, materials, or equipment, shall prejudice the rights of Owner to correct or reject the same as hereinafter provided.

ARTICLE 19 ADMINISTRATIVE RECORDS

- 19.1 The Construction Manager will maintain at the job site, unless otherwise agreed to in writing by the Project Manager, on a current basis, files and records such as, but not limited to the following:
 - .01 Contracts or Purchase Orders, Shop Drawing Submittal/Approval Logs, Equipment Purchase/Delivery Logs, Contract Drawings and Specifications with Addenda, Warranties and Guarantees, Cost Accounting Records, Sales Tax Recovery Status Report, Labor Costs, Material Costs, Equipment Costs, Cost Proposal Request, Payment Request Records, Meeting Minutes, Cost-Estimates, Lab Test Reports, Insurance Certificates and Bonds, Contract Changes, Purchase Orders, Material Purchase Delivery Logs, Technical Standards, As-Built Marked Prints, Operating & Maintenance Instruction, Daily Progress Reports, Monthly Progress Reports, Correspondence Files, Transmittal Records, Inspection Reports, Bid/Award Information, Bid Analysis and Negotiations, Punch Lists, Project Manual, Records.
- 19.3 The project records shall be available at all times to the Owner and Project Consultant for reference or review.

ARTICLE 20
OWNER'S RESPONSIBILITIES

- 20.1 Owner's Information - The Owner shall provide full information regarding its requirements for the project to the Construction Manager.
- 20.2 Project Consultant's Agreement - The Owner shall retain a Project Consultant to design and prepare construction documents for the project. The Project Consultant's services, duties and responsibilities are described in the Agreement between the Owner and the Project Consultant, a copy of which will be furnished to the Construction Manager.
- 20.3 Site Survey and Reports - The Owner shall furnish all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description of the project.
- 20.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures and for permanent changes in existing facilities.
- 20.5 Drawings and Specifications - The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.
- 20.6 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense.
- 20.7 Project Faults or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give prompt written notice thereof to the Construction Manager and Project Consultant.
- 20.8 Owner's Reviews, Inspections, Approvals, And Payments Not A Waiver - Owner's review, inspection, or approval of any Work, Design Documents, Applications for Payment or other submittals to Owner by Construction Manager shall be solely for the purpose of determining whether the same are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner or Owner's representative of such Work or documents shall relieve Construction Manager of its responsibility for the performance of its obligations under the Contract Documents or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Contract Documents shall not relieve Construction Manager of responsibility for the performance of its obligations under the Contract. Payment by Owner pursuant to the Contract Documents shall not constitute a waiver of any of Owner's rights under the Contract Documents or at law, and Construction Manager expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.
- 20.9 Delay Or Forbearance Not Waiver - Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Contract Documents or to require compliance with any obligation of Construction Manager under the Contract Documents shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.
- 20.10 Right to Stop Work - If the Construction Manager fails or refuses to perform the Work in accordance with the Contract Documents, or is otherwise in breach of the Contract Documents in any way, Owner

may, at its option, instruct Construction Manager to stop the Work or any part thereof. Upon receipt of such instruction from Owner in writing, Construction Manager shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instruction to stop work has been corrected, no longer exists, or Owner instructs that the Work may resume.

- 20.11 Right to Perform Work - In the event Owner issues instructions to stop the Work and in the further event that Construction Manager fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instruction to stop work will be eliminated or corrected, then Owner shall have the right to carry out the Work with its own forces, or with the forces of other contractors, and Construction Manager shall be fully responsible for the cost incurred in performing such Work. The rights set forth in this Section herein shall be in addition to, and without prejudice, of any other rights and remedies Owner may have under the Contract Documents, at law or in equity.

ARTICLE 21 ADMINISTRATION OF THE CONTRACT

- 21.1 The Construction Manager will provide Administration of the Subcontracts. The Owner will provide administration of the contract between Owner and Construction Manager.
- 21.2 Neither the Project Consultant, Owners Representative, nor the Owner will be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work or for the acts of omission or commission of the Construction Manager, its Subcontractors or their agents or employees or any other person performing any of the work.
- 21.3 The Owner will have the authority to reject Work which does not conform to the Contract Documents and to require special inspection or testing. Neither the Owner's authority to act under this Paragraph, nor any decision made by it in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner to the Construction Manager, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 21.4 The Construction Manager shall forward all communications to the Owner's Representative and copy to the Project Consultant.
- 21.5 The Construction Manager shall submit Applications for Payment to the Owner for approval prior to Payment to the Construction Manager.
- 21.6 The Project Consultant shall approve shop drawings for design only, the Construction Manager being responsible for all dimensions, quantities, etc., necessary to complete the Work in compliance with the Drawings and Specifications and other Contract Documents.
- 21.7 The duties, responsibilities and limitations of authority of the Project Consultant and the Owner will not be modified nor extended without written consent of the Construction Manager, the Project Consultant, and the Owner.
- 21.8 Lines of Communication - During pre-construction and construction activities Construction Manager shall direct all communications to the Project Manager with a copy to Project Consultant. The Owner and Project Consultant shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality, except in cases of emergency and/or threat to property or person.

- 21.9 Forms. Construction Manager shall only use Owner's standard forms for Change Orders, Applications for Payment, and any other forms Construction Manager may be required to complete pursuant to the Contract Documents.

ARTICLE 22 INSPECTION

- 22.1 Construction will be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors working for the Owner and/or other governmental authorities.
- 22.2 Code Inspections - All projects require detailed code compliance inspections during construction in disciplines determined by the inspecting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.
- 22.3 The Construction Manager shall notify the appropriate inspector(s), no less than 24 hours in advance, that the work is ready for inspection and before the work is covered. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the Permitting Authority. All costs for uncovering and reconstruction shall be borne by the Construction Manager.
- 22.4 All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality.
- 22.5 Cost for all reinspection of work found defective and subsequently repaired shall be borne by the Construction Manager and corresponding subcontractor.

ARTICLE 23 DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

- 23.1 In the event that the Construction Manager covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner, such work shall be uncovered and displayed for the Owner's inspection upon request, and shall be reworked at no cost in time or money to the Owner.
- 23.2 If any of the work is covered, concealed or obscured in a manner not covered by Article 23.1 above, it shall, if directed by the Owner, be uncovered and displayed for the Owner's inspection. If the uncovered work conforms substantially with this Contract, the costs incurred by the Construction Manager to uncover and subsequently replace such work shall be borne by the Owner; otherwise, such costs shall be borne by the Construction Manager.
- 23.3 The Construction Manager shall, at no additional cost in money to the Owner or extension of time, correct work rejected by the Owner as defective or failing to conform to this Contract. Additionally, the Construction Manager shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.
- 23.4 In addition to its warranty obligations set forth elsewhere herein, the Construction Manager shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months following the date of Owner Occupancy of the Project or a designated portion thereof.

- 23.5 The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work.
- 23.6 In such event, the Contract Price shall be reduced, at Owner's option, by the greater of (i) the reasonable costs of removing and correcting the defective or nonconforming work, or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work.
- 23.7 If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Construction Manager shall, upon written demand from the Owner, pay the owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 24 SUBCONTRACTS

- 24.1 The Contract Documents make no attempt to fix the scope of the Work of any Subcontractor nor the responsibilities of any such Subcontractor, it being understood that the Construction Manager shall fix the scope of all Work and responsibilities of the Subcontractor. Construction Manager shall not replace Subcontractor without good cause. Construction Manager will disclose any related party relationship in a bidding subcontractor in writing prior to the award of contracts. For the purposes of this agreement, a related party relationship shall constitute any instance of common ownership, common management, or an ownership stake in the bidding subcontractor.
- 24.2 The Construction Manager shall continuously update information concerning Subcontractors submitted to the Owner as Post-Award Information by submitting:
- .01 The general form of Subcontract Agreement used by the Construction Manager within thirty (30) days of execution of the GMP Addendum.
 - .02 Updated listings of Subcontractors denoting changes to the list submitted within ten (10) days of said change.
 - .03 Copies of executed Subcontractor Contracts within ten (10) days of their execution.
 - .04 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application For Payment submitted by the Construction Manager.
 - .05 All contracts with Subcontractors shall incorporate by reference the terms and conditions of the Contract Documents.
- 24.3 The Construction Manager shall cause and require to be included in all Subcontracts a provision for the benefit of the Owner binding the Subcontractors to remain bound by the Subcontracts in the event the Construction Manager is replaced by another Construction Manager pursuant to the term of the Contract Documents. The Construction Manager shall also include in all Subcontracts a provision requiring the Subcontractor, in the event of the Construction Manager's termination, to consent to the assignment of their Subcontracts to the Owner.
- 24.4 The Owner may at any time request from the Subcontractors, or any of them, a sworn statement of account with the Construction Manager and the Construction Manager shall cause to be included in all

Subcontracts a requirement that the Subcontractors provide said sworn statement upon Owner's request.

- 24.5 Each Subcontractor and supplier must agree to assign all of its warranties to Owner. In addition each Subcontractor and supplier must warrant all of its Work, equipment, materials and labor to Owner in accordance with the terms and provisions of its contractual obligations to Construction Manager and any legal or statutory provisions that apply to its work, materials or equipment.
- 24.6 Owner may at its discretion require Construction Manager to have major sub-subcontractors or suppliers comply with the requirements of this Article or other provisions of the Contract Documents.
- 24.7 Any disputes which may arise in this connection between the Construction Manager and any Subcontractor must be settled between the parties concerned and the Owner will not undertake, nor be in any way responsible for, the settlement of such disputes.
- 24.8 No Subcontractor shall under any condition relieve the Construction Manager of his liabilities and obligations to the Owner under his Contract and the Construction Manager shall be solely responsible to the Owner as provided herein.
- 24.9 All subcontracts shall provide:
- .01 LIMITATION OF REMEDY - NO DAMAGES FOR DELAY
 - .02 That the subcontractor's exclusive remedy for delays in the performance of the contract caused by any events beyond its control, including delays claimed to be caused by the Owner or Project Consultant or attributable to the Owner or Project Consultant and including but not limited to claims based on breach of contract or negligence, shall be an extension of its contract time.
 - .03 In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are computed in accordance with General Conditions Exhibit C.
 - .04 Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.
 - .05 Each subcontract shall require that any claims by subcontractor must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.
- 24.10 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 24.11 Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Project Consultant. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner

must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety.

24.12 Subcontracts to be provided - The Construction Manager shall include a copy of each subcontract, including the general and supplementary conditions, in the project manual.

24.13 Bonding of Subcontractors - The Construction Manager shall submit proof, in the form of copies of properly executed bond forms, that the following major subcontractors have provided a performance bond and a payment bond to the Construction Manager and Owner as dual obligees with a corporate surety approved by the United States Treasury Department and authorized to do business in the State of Florida and otherwise acceptable to the Owner:

- HVAC/Mechanical
- Electrical
- Plumbing
- Roofing
- Shell Contractor

.01 If the value of a subcontract listed above is below \$200,000, the Subcontractor Bonding requirement for that respective subcontract may be waived by the Owner, at its sole discretion, for M/WBE Subcontractors participating in the Owner's M/WBE Subcontractor Programs as described elsewhere in the Contract Documents. The Construction Manager may bond any subcontractor whose contract exceeds \$100,000.00 which shall be an expense to the Owner if approved in writing by the Owner.

.02 The respective performance and payment bonds shall:

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

.03 The owner reserves the right in its sole discretion to accept a Subguard program in lieu of

subcontractor bonds.

ARTICLE 25 CONSTRUCTION MANAGER'S FEES

25.1 Payment for Construction Services. Construction Manager's Fee related to the construction services rendered shall be limited to the percentage, shown on Exhibit B of the CMAR Agreement (and as outlined in General Conditions Exhibit D), of the Cost of Work. Cost of Work for the purposes of computing Construction Manager's Fees shall include all costs incurred in completion of the work as defined in Article 26 excluding any contingency or allowances.

25.2 Costs and Expenses Included in General Conditions / General Requirements Fee - The following (a non-exclusive list) shall be included in the Construction Manager's General Conditions / General Requirements for services during the Construction Phase:

- .01 Salaries or other compensation of the Construction Manager's employees at the Project site.
- .02 The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on General Conditions Exhibits C.
- .03 General operating expenses incurred in the management and supervision of the project.
- .04 Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and other supplies.
- .05 Other General Conditions - General Conditions, which are not Cost of the Work, as defined in Article 26 below, include but are not limited to:

- Field Office Rental
- Field Office Security
- Computers
- Pest Control
- Trash Hauling Equipment
- CPM Consultants
- Drug Testing
- Quality Control Systems
- Telephone Systems And Associated Charges
- Trash Chutes
- Surveys And Layouts
- Safety Rails
- Safety Inspections
- Parking Space
- Field Office Setup
- Field Office Furniture
- Copy Machines
- Postage
- As Built Drawings
- Security Guards
- Living Expenses
- Daily Cleanup
- Trash Dumpsters And Associated Fees
- Cleanup/Safety Labor
- Portable Toilets And Tanks
- Safety Supplies
- Water/Ice/Cups
- Barricades
- Field Office Janitorial
- Salaries At Project Site
- Fax Machines
- Couriers
- Closeout Documents
- I.D. Badges
- Progress Photographs
- Final Cleaning
- Blueprints And Copies Of Blueprints
- Radios
- Job Signs
- First Aid Supplies
- Fire Extinguishers
- Small Tools

- Temporary Fencing
- Material Unloading
- Golf Carts
- General Purpose Carpenters
- Horizontal And Vertical Transportation Of Materials And Personnel
- Electric Charges
- Material Hoists
- Punch Lists
- Temporary Plywood Partitions
- Temporary Storage Containers
- Water Charges
- Personnel Hoists
- Storage
- Temporary Heat

25.3 The costs of premiums for all insurance and bonds (including Subguard) which the Construction Manager is required to procure by this agreement specifically for the construction project.

25.4 Any General Condition / General Requirement Cost(s) line item that inadvertently is included in a Cost of Work item and appears on the approved Cost of Work Schedule of Values Application for Payment forms shall be removed immediately and any payment made to the CM of this line item shall be reimbursed to the Owner upon being identified on the subsequent Payment Application.

ARTICLE 26 COST OF WORK

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

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

26.2 Direct Cost Items

.01 Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to contract under this Agreement.

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

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

Costs.

- .03 Not Used
- .04 Cost including transportation and maintenance of all materials, supplies, equipment and tools not owned by the workmen, which are employed or consumed in the performance of the work. Charges for material shall be the Construction Manager's net actual cost for the purchase of the material required to complete the Work. A reasonable allowance shall be made for waste and scrap. All materials purchased that exceed the quantities required to complete the work shall be returned or sold for scrap, with the proceeds credited to the Owner. Credits for cost reductions available to the Construction Manager due to trade discounts, free material credits, and/or volume rebates will accrue to the benefit of the Owner. Cash discounts available on material purchases shall be credited to Owner if the Construction Manager is provided Owner funds in time for Construction Manager to take advantage of any such cash discounts. The Construction Manager is required to notify the Owner should the cash discount on a particular purchase equal or exceed \$1,000, to allow the Owner the opportunity to participate in the cash discount.
- .05 Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof which are used in the support of a subcontractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
 - a) Proposed rental rates and related fair market values for Contractor owned (affiliate owned, subsidiary owned, or related party owned) equipment shall be submitted to and approved by Owner prior to being used in connection with the Work. The projected usage for each piece of equipment proposed to be rented, and estimated total rentals shall be submitted for approval in advance in a form satisfactory to Owner so that an appropriate lease versus buy decision can be made.
 - b) Equipment rented from third parties shall be priced at the net actual rental cost, considering all trade and other discounts available to the Construction Manager. Costs of third party or rental equipment supplier insurance shall be declined and the insurance of such equipment shall be under the insurance program for the entire project. Each piece of equipment to be rented shall have hourly, daily, weekly, and monthly rates submitted to and approved by Owner in advance before equipment rental charges will be considered reimbursable.
 - c) The reimbursable equipment rental rates shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Owner and Contractor will use the applicable portions of the latest edition of the Army Corps of Engineers equipment rental rate guide (Construction Equipment Ownership and Operating Expense Schedule exclusive of the costs for fuel, filters, oil and grease) to mutually agree in advance on hourly, daily, weekly, and monthly rental rates to use during the project. If these two reference sources do not contain specific listings for pieces of equipment to be rented, the two parties may mutually agree to reimburse the Contractor up to 75% of the current competitive rental rates from local third party equipment rental companies.
 - d) The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 75% of the fair market value of such equipment at the time of its commitment to

the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice and submitted to the Owner along with a proposed fair market value in accordance with the procedure outlined above. The fair market values to be used for purposes of this contract clause will be subject to advance written approval of the Owner. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for like pieces of equipment will be combined if the pieces of equipment were not used at the same time.

- e) Fair market value for used material and equipment as referred to in this contract shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.
 - f) Rental charges for equipment which is not owned by Contractor or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable, will be reimbursable at actual costs, as long as rental rates are consistent with those prevailing in the locality. Arrangements such as rent-to-own shall be made known to and shall accrue to the benefit of the Owner. Any and all equipment acquired during this project due to a rent-to-own arrangement shall be the property of the Owner. At the conclusion of the project any of this equipment may, at the discretion of the Owner, be sold to the Construction Manager or others at a price to be negotiated at that time.
 - g) All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under this contract except as covered by insurance procured for the work
 - h) The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to the Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition. At the completion of the project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Owner, or at Owner's option, Contractor may keep any such equipment for an appropriate credit to job cost, which will be mutually agreed to by Owner and Contractor.
 - i) All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repair and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.
- .06 No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

- .07 If pre-approved by the Owner in writing, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP Schedule of Values breakdown where it is deemed advantageous due to schedule or economic benefit. Bidding, documentation, and reimbursement of self-performed work is subject to the provisions outlined in Articles 3.4.9 and 3.5.4 of the Agreement.

26.3 COSTS NOT TO BE REIMBURSED

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

Any personal computer applications and related costs or remote job entry data functions and related costs which will be incurred by personnel at the job site must receive advance written approval from the Owner to be considered a reimbursable cost, otherwise the associated cost will not be paid.

- .07 Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project will only be reimbursed with prior written approval of the project manager.
- .08 Costs of subcontractors bonds not required by this agreement or approved in writing by Owner.
- .09 Payment and performance bonds, including individual subcontractor bonds and/or Subguard insurance, that results in cumulative coverage in excess of the agreed upon Guaranteed Maximum Price, without prior written consent from the Owner. Deductibles paid by Construction Manager on any insurance claim will not be reimbursed unless the loss could not have been reasonably avoided by Construction Manager and/or all subcontractors had it reasonably performed all contractual safeguards.
- .10 Costs due to negligence or willful misconduct of the Construction Manager, Subcontractors, or suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

- .11 Tools and equipment with a cost of \$1,000 or less.
 - .12 Discretionary labor benefits such as, but not limited to: cost of living adjustments, auto allowances, etc. unless previously approved by Owner.
 - .13 Overtime wages not approved in writing by the Owner prior to the Construction Manager incurring the cost.
 - .14 Any costs or fees in excess of industry standards for the applicable benchmarks set forth in General Conditions Exhibit D.
 - .15 Costs resulting from failure of Construction Manager or any subcontractor to procure and maintain insurance by the Contract Documents.
 - .16 Costs to replace or pay for lost or stolen machinery or equipment or materials. However, Construction Manager may seek to recover replacement cost from insurance, sureties, Subcontractors, suppliers, or other such third parties.
 - .17 The cost for any legal, accounting or other professional services except to the extent provided in Article 26.2 above.
 - .18 Penalties, fines, or costs imposed by governmental authorities in connection with, or resulting from any violations for noncompliance with laws, regulations, codes, ordinances, or directives by the Contractor or any subcontractor.
 - .19 Costs associated with the Construction Manager's failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom, unless such failure is due to the failure of the Drawings and Specifications to conform with the laws and regulations applicable thereto.
 - .20 Costs of accelerating the Work to the extent caused by the negligence or default of the Contractor or any subcontractor of any tier.
- 26.4 Any non-reimbursable cost(s) line item that inadvertently is included in a Cost of Work item and appears on the approved Cost of Work Schedule of Values Application for Payment forms shall be removed immediately and any payment made to the CM of this line item shall be reimbursed to the Owner upon being identified on the subsequent Payment Application.

ARTICLE 27
CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVES

- 27.1 The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project shall be authorized by Change Order (CO) or Construction Change Directive (CCD) signed by the Owner before the change is implemented.
- 27.2 A Change Order or Construction Change Directive is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fees, or the Construction Completion date. Each adjustment in the GMP

resulting from a change order shall clearly separate the amount attributable to the Cost of Work.

- 27.3 If none of the methods set forth in General Conditions Exhibit C is agreed upon, the Construction Manager, provided he receives a written Construction Change Directive signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Construction Change Directive is issued under these conditions, the Project Consultant will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of Work as outlined in Article 26 of the General Conditions. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- 27.4 The cost of the Change in work shall be computed in accordance with General Conditions Exhibit C.
- 27.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with General Conditions Exhibit C.
- 27.6 Claims For Additional Construction Costs or Time - All claims for additional costs or time shall be made by request for a change order submitted as provided in Article 27 of the General Conditions. Additional time shall be considered only if the approved CPM critical path is impacted by the change.
- .01 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Project Consultant or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such time as the Owner may reasonably determine.
- .02 Only delays which are determined to extend the critical path for the schedule for constructing the project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.
- 27.7 Minor Changes In The Project - The Facilities Project Manager will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order.
- 27.8 Emergencies - In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency

work shall be determined as provided in Article 27 and Exhibit C of the General Conditions.

**ARTICLE 28
DISCOUNTS AND PENALTIES**

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

**ARTICLE 29
BONDS**

- 29.1 Bonds
- .01 In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the GMP as revised.
- .02 To be acceptable to the School Board of Broward County as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
- .03 The Surety Company shall be approved by the United States Treasury Department and have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- .04 The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- .05 The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued
- .06 If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
- .1 The Surety Company shall have at the minimum an A- Policy Holder's Rating, and a Class VI Financial Rating in the latest issue of Best's Key Rating Guide.
- .2 The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
- .07 Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring

carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.

- .08 In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

ARTICLE 30 INDEMNITY AND DUTY TO DEFEND

- 30.1 To the fullest extent permitted by law, the Construction Manager shall indemnify, defend and hold harmless the Owner, and its members, officers, employees and agents (“Indemnitees”) from and against all claims, causes of action (by whomever brought or alleged and regardless of the legal theories upon which the liability, claims or causes of action are based), liabilities, damages, losses, costs, expenses and fees, including, but not limited to, the reasonable fees of attorneys, expert witnesses and other consultants at the pre-trial, trial and appellate levels, which are or may be imposed upon, incurred by or asserted against Indemnitees that arise out of, are caused by, result from, or are incidental to Construction Manager’s performance under this Agreement, or to the extent any claims, liability, causes of action, damages, losses, costs, expenses or fees are caused by negligence, recklessness, or intentional wrongful conduct of the Construction Manager or any sub-contractor or sub-sub-contractor, any supplier and any individual or entity directly or indirectly employed by any of them. Construction Manager shall insure each sub-contract contains this provision and the requirement for each sub-contractor to indemnify, defend and hold harmless the Indemnitees, and that flow-down clauses requiring this provision and requirement are utilized by all entities Construction Manager has a direct contract with. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise. This indemnification obligation shall not be diminished or limited in any way by any insurance maintained pursuant to the Agreement or otherwise available to the Construction Manager. The remedy provided to the Indemnitees by this indemnification shall survive this Agreement. A claim for indemnity pursuant to this provision shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning, or construction of an improvement to real property. The provisions of this Section are intended to require the Construction Manager to furnish the greatest amount of indemnification allowed under Florida law.
- 30.2 In any and all claims against the Owner by any employee of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, the obligations for Construction Manager to indemnify Owner under this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Manager under workman’s compensation acts, disability acts, or other employee benefit acts.
- 30.3 In the event that any claims are brought or actions filed against the Owner with respect to the indemnity contained herein, the Construction Manager agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Construction Manager agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Construction Manager further agrees to pay, at the sole expense of the Construction Manager, the attorney’s fees and cost incurred by those attorneys selected by the Owner to appear and defend such claims or actions on behalf of the Owner. However, if the claims or actions are covered by insurance and such coverage is acknowledge by the insurance company in writing to the Owner, then, in that case, the insurance company shall choose counsel, direct the defense and be the judge of the acceptability of any compromise or settlement of any such claims or actions

against the Owner which are within the insurance policy limits and are paid by the insurance company solely. Otherwise, if the claims or actions are not covered by insurance, then, at its sole option the Owner shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions asserted against the Owner.

- 30.4 The Construction Manager agrees, at its own expense, and upon written request by the Owner, to defend any suit, action or demand brought against the Owner on any claim or demand that is alleged, whether rightfully or wrongfully, to arise out of or result from the negligence, recklessness or intentional wrongful conduct of the Construction Manager or any sub-contractor or sub-sub-contractor, any supplier and any individual or entity directly or indirectly employed by any of them
- 30.5 The Construction Manager recognizes the nature of the indemnification obligations imposed under this contract and voluntarily makes these covenants. The obligation imposed upon the Construction Manager under this Indemnification Agreement shall survive termination of this contract.

ARTICLE 31 CONSTRUCTION MANAGER'S INSURANCE

- 31.1 The Construction Manager shall not provide any services under this contract until the Construction Manager has obtained all insurances required hereunder and such insurances have been approved by the Owner. Owner may withhold payments due to Construction Manager in accordance with this Contract or terminate or suspend this contract with all costs or expenses associated with same to be paid by Construction Manager in the event Construction Manager fails to comply with any requirement in the Contract regarding insurance.
- 31.2 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.
- 31.3 The Construction Manager shall furnish certificates of insurance to the Owner for review within ten (10) days after award and shall maintain the required insurance at all times during the term of this contract.
- 31.4 All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All insurance companies providing policies required under this contract shall have at least an "A-" rating and a financial rating not less than VI in the current A.M. Best Manual or hold a Moody's Investors Service Financial Strength of "Aa3" or better.
- 31.5 All certificates of insurance shall be in the form as approved by Insurance Standards Office (ISO), unless approved by Owner's Designated Risk Management Administrator and such certificates shall clearly indicate that the Construction Manager has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims. No material change or cancellation of the insurance shall be effective without a thirty (30) day prior written notice to and approval by the Owner's Designated Risk Management Administrator.
- 31.6 The Construction Manager shall verify that all subcontractors utilized in conjunction with all services provided under this contract shall maintain insurance of the type, amount, and classification required by these provisions.

- 31.7 Neither approval by the Owner, nor failure to disapprove the insurance provided by the Construction Manager shall relieve the Construction Manager of full responsibility to provide the insurance as required by this contract.
- 31.8 All insurance policies required under this contract shall be endorsed to be primary of all other valid and collectable coverages maintained by the Owner. The Owner shall be named as an additional insured under the General Liability policy.
- 31.9 The Owner reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the life of this contract.
- 31.10 Insurance Provider and Surety: In the event that any insurance provider, including but not limited to performance and payment bond surety companies, is downgraded from A-VI rating by AM Best or Aa3 rating by Moody's Investor Service, or has an order of liquidation entered against it in any jurisdiction, Construction Manager shall furnish a replacement insurance product, insurance policy or surety bond, that satisfies the requirements of this Agreement within fifteen (15) days of receipt of written notice from Owner or from the time Construction Manager becomes aware of the downgrade or order of liquidation whichever is sooner.
- 31.11 Construction Manager and Surety shall have a continuing obligation to insure that all insurance or surety requirements are satisfied throughout the construction of the project and until all post completion obligations; including punch list and warranty requirements are completed or expire.

INSURANCE REQUIRED:

- 31.12 **Commercial General Liability Insurance:** The Construction Manager shall maintain Comprehensive General Liability Insurance, including Products & Completed Operations, Personal and Bodily Injury, and Contractual Liability, to cover the indemnification language set forth herein. Limits shall not be less than \$1,000,000 per occurrence; \$1,000,000 general aggregate. General Aggregate shall apply Per Project. Products Completed Operations aggregate shall not be less than \$1,000,000. The Owner, its members, officers, employees and agents shall be named as an Additional Insured.
- 31.13 **Automobile Liability Insurance:** The Construction Manager shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in the amount of not less than One Million Dollars (\$1,000,000) per occurrence Combined Single Limit for Bodily Injury and Property Damage and shall not be any less restrictive than the standard ISO Business Auto Policy CA 00 01.

In the event the Awardee does not own any vehicles, we will accept hired and non-owned coverage for \$1,000,000 Combined Single Limits and we will require an affidavit signed by the Awardee indicating the following:

(Insured's Name) does not own any vehicles. In the event we acquire any vehicles throughout the term of this agreement, (Insured's Name) agrees to provide proof of "Any Auto" coverage effective date of acquisition.

- 31.14 **Workers' Compensation Insurance:** The Construction Manager shall maintain Workers' Compensation Insurance in accordance with Florida Statutory Limits and Employers Liability Insurance with a limit of not less than \$500,000/\$500,000/\$500,000 (each accident/disease—each employee/disease-policy limit).

- 31.15 **Insurance Warranty Period:** All Insurance policies must remain in effect during performance of the work and for a period of one (1) year after Certificate of Completion, Certificate of Occupancy (OEF 110b), or Certificate of Final Inspection (OEF 209) which has been signed by the Chief Building Official /certified inspector.
- 31.16 **Certificate of Insurance Requirements:** Prior to the commencement of any work, as evidence of required coverage, Awardee must provide a Certificate of Insurance to The School Board of Broward County, Florida's Risk Management Department for approval. Certificates should be faxed to The School Board of Broward County, Florida, Risk Management Department Certificate Tracking System at 1-866-897-0425.
- 31.17 Liability Policies are to contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:
- .01 The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
 - .02 All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.
 - .03 Contractual liability is included in the General Liability policy.
 - .04 General Aggregate must apply Per Project and indicated on the certificate.
 - .05 Project Number/Location must be referenced in the Description of Operations.

OWNER PROVIDED BUILDER'S RISK INSURANCE PROGRAM

- 31.18 **OWNER TO MAINTAIN BUILDER'S RISK INSURANCE PROGRAM:** Except as otherwise provided, the Owner shall maintain a builder's risk insurance policy on behalf of the Construction Manager and its Subcontractors, in effect at the time that Notice to Proceed is received by Construction Manager.
- 31.19 Owner Builder's Risk Insurance Program for the Construction Manager and its Subcontractors will be limited to Covered Loss resulting from damage or destruction of property while such property is at the construction jobsite of the Project as described in this Contract.
- 31.20 **NO COVERAGE ON CONSTRUCTION MANAGER'S TOOLS OR EQUIPMENT:** The coverage under the Owner Builder's Risk Insurance Program will be limited to property which has been, or is intended to be, incorporated into the Work as part of the contract price for which title has either been passed to the Owner, or is intended to pass to the Owner.
- 31.21 **RESPONSIBILITY OF THE DEDUCTIBLE:** The Construction Manager shall be solely responsible for the first \$20,000 of Covered Loss in any one occurrence for any covered peril. If the deductible on the Owner Builder's Risk Insurance Program applicable to the Covered Loss exceeds the \$20,000 for which the Construction Manager is responsible, the Owner shall be responsible for that portion of Covered Loss incurred by the Construction Manager and its Subcontractors in excess of \$20,000 up to the amount of the deductible in the Owner's Builder's Risk Insurance Program.
- 31.22 **COMMENCEMENT OF THE OWNER BUILDER'S RISK INSURANCE PROGRAM:** The Owner Property Insurance Program shall commence with respect to the Work at the later of the date Notice to

Proceed is received by the Construction Manager under this contract or commencement of Work at the construction jobsite of the Project as described in the Contract.

- 31.23 **TERMINATION OF OWNER PROPERTY INSURANCE PROGRAM:** Coverage under the Owner Builder's Risk Insurance Program for the Construction Manager and its Subcontractors shall terminate at the earliest of:
- .01 With respect to any completed portion of the Work, if the Owner elects to occupy and/or use such completed portion of the Work prior to Substantial Completion, the date the Owner first occupies or uses such completed portion of the Work; or
 - .02 If work by the Construction Manager is permanently abandoned or terminated prior to Substantial Completion, at the time such work is permanently abandoned or terminated; or
 - .03 Termination of the Contract by the Owner.
- 31.24 **OWNER PROPERTY INSURANCE PROGRAM SUBJECT TO LIMITATIONS:** The rendering of the Owner Builder's Risk Insurance Program shall not constitute any representation by the Owner with respect to the adequacy of the insurance to protect the Construction Manager or its Subcontractors against property insurance type losses. The Owner emphasizes that coverages in the Owner Builder's Risk Insurance Program is limited in scope and do not necessarily include all insurance coverages, either desirable or normally maintained by the Construction Manager or Subcontractors. Except as otherwise specifically provided in the Contract, the providing of the Owner Builder's Risk Insurance Program shall not be construed to be a limitation on the nature or extent of the Construction Manager's or its Subcontractors' obligations under this Contract nor to relieve the Construction Manager or its Subcontractors of any such obligations.
- 31.25 **NOTICE OF CLAIM UNDER OWNER BUILDER'S INSURANCE PROGRAM:** In addition to, and not in lieu of, any other notice required under this Contract, if a Construction Manager or its Subcontractor suffers injury or damage to property which might result in Covered Loss under the Owner Builder's Risk Program, written notice of such injury or damage shall be given to the Division of Risk Management of the School Board of Broward County, as soon as practical, but not exceeding seven (7) day after first observance of such injury or damage. The notice shall provide sufficient detail to enable the Division of Risk Management or its designee, to provide an initial report to the Owner's insurers and to properly investigate the matter. Notification shall be directed to the SBBC Risk Management Division at (754) 321-1900.
- 31.26 **COOPERATION OF CONSTRUCTION MANAGER AND SUBCONTRACTORS:** The Construction Manager and all of its Subcontractors shall assist the Owner and the Owner's insurers and fully cooperate in respects to reporting, investigation and adjusting of claims under the Owner Builder's Risk Insurance Program whether or not involving the respective Construction Manager or Subcontractor.
- 31.27 **WAIVER OF SUBROGATION:** To the extent such insurance permits, and then only to the extent Owner collects under the Owner Builder's Risk Program, SBBC waives any and all claims against Construction Manager or Subcontractors and their respective agents, servants and employees, for loss or damage to Owner's property. To the extent such insurance permits and then only to the extent the Construction Manager collects under its property insurance coverage, Construction Manager waives any and all claims against Owner and its agents, servants and employees for loss or damage to Construction Manager's property. Construction Manager shall require all Subcontractors to waive, to the extent such insurance permits and then only to the extent such Subcontractor collects under its

property insurance coverage, any and all claims against SBBC and its agents, servants and employees for loss or damage to such Subcontractor's property.

- 31.28 **OWNER'S RIGHT TO TERMINATE, MODIFY OR REPLACE:** The Owner reserves the right to terminate whole or in part or modify the Owner Builder's Risk Insurance Program. In the event of termination or modification, whether initiated by the Owner's or its insurers, the Owner will assume the responsibility for that portion of any loss suffered by the Construction Manager or its Subcontractors which would have been covered by the Owner Builder's Risk Insurance Program.

ARTICLE 32 WAIVER OF SUBROGATION

- 32.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 31 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 32.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 32.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 33 WITHHOLDING PAYMENT TO CONSTRUCTION MANAGER

- 33.1 In addition to the Retainage, payments, including but not limited to Final Payment, may be withheld or reduced by the Owner in its sole discretion if any of the following exists:
- .01 The work is not proceeding in accordance with construction Documents Schedule as anticipated by the Owner. In that event, the Owner will assess the anticipated delay and the Owner will use the amounts specified for Liquidated Damages as the basis for amounts withheld. Said funds shall be held until such time as the Owner determines that the work is back on schedule. By making said funds available to Construction Manager, owner does not waive its right to assess liquidated damages at the completion of the Project:
 - .02 Liquidated Damages as set forth in this Contract;
 - .03 Unremedied Defective Work;
 - .04 Unremedied Punch-List items;

- .05 Subject to Owner's written notice to Construction Manager in accordance with Contract Documents, back charge items for work performed by Owner or another contractor at the request of Owner, for work within the scope of Work under this Construction Contract.
 - .06 Claims filed by subcontractors, laborers, suppliers, materialmen or others;
 - .07 Failure to comply with any and all insurance requirements;
 - .08 Failure of the Construction Manager to make payment properly to Subcontractors or others;
 - .09 Damage to the Owner or its property or another contractors' work caused by the Construction Manager or its subcontractors.
- 33.2 To the extent that any portion of Article 33 is inconsistent with Section 218.70, as amended, Florida Statutes, Local Government Prompt Payment Act, Section 218.70 shall govern.

**ARTICLE 34
TERMINATION BY THE CONSTRUCTION MANAGER**

- 34.1 If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon giving the Owner a written seven day notice to cure period, terminate the contract and request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminate expenses incurred by the Construction Manager.

**ARTICLE 35
OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S
OBLIGATIONS AND TERMINATION BY OWNER FOR CAUSE**

- 35.1 If the Construction Manager fails to perform any of his obligations under this Agreement including any obligation he assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- 35.2 The Owner may terminate the contract with the Construction Manager for breach of any of the provisions of this Agreement. When such a breach exists the Owner shall notify the Construction Manager in writing of the breach, and if the Construction Manager does not within seven days of that written notice, cure, or satisfactorily commence cure, of the breach, the Owner may terminate this Agreement for cause.
- 35.3 If this Agreement is terminated by the Owner for cause, the Construction Manager shall not be entitled to receive any further payment until the all Work covered by this Agreement is completed and all costs

relating to this Work are known to the Owner. After all Work is complete and paid for, any payments still owed the Construction Manager shall be paid by Owner to Construction Manager. Any amount paid by the Owner in excess of any payments still owed to the Construction Manager shall be paid by the Construction Manager to the Owner.

- 35.4 If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

ARTICLE 36 TERMINATION BY OWNER WITHOUT CAUSE

- 36.1 The Owner may, upon ten (10) days' written notice to the Construction Manager, terminate this Agreement in whole or in part when it is in the interest of the Owner and at the sole discretion of the Owner. If the Owner terminates this Agreement for any reason other than pursuant to Article 35, he shall reimburse the Construction Manager for any unpaid Cost of Work due him under Article 26, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of Work at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitments.
- 36.2 After the establishment of the Guaranteed Maximum Price or at the completion of the Preconstruction Phase, if the final cost estimates or lack of funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement at its sole discretion and pay the Construction Manager his proportionate fee due in accordance with Article 25 plus any costs incurred pursuant to Articles 26.

ARTICLE 37 LAWS AND REGULATIONS

- 37.1 Construction Manager and its employees, representatives and subcontractors shall at all times in the performance of the work, comply with all applicable laws, ordinances, statutes, rules and regulations

(including but not limited to the Florida Building Code), in effect at the time this Agreement is signed.

- 37.2 If, during the term of this Construction Contract, there are any changed or new laws, ordinances or regulations not in existence at the time of signing this Construction Contract which become effective and which affect the cost or time of performance of the Construction Contract, Construction Manager shall within fifteen (15) days of the discovery of said law, ordinance or regulation, notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Construction Contract. Upon concurrence by Owner as to the effect of such changes, an adjustment in the compensation and/or time of performance may be made at Owner's discretion.
- 37.3 If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, Construction Manager shall within fifteen (15) days of discovery of same report the same in writing to Owner and Project Consultant who will issue such instructions as may be necessary.

ARTICLE 38 DISPUTE RESOLUTION

- 38.1 The Owner and Construction Manager agree that, in the event of a dispute, the parties will attempt to resolve such dispute without litigation and that resolution through mediation procedures will be encouraged. Failing resolution, and prior to commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.
- 38.2 The existence of a dispute between the parties shall not be the basis of the Construction Manager unilaterally electing not to continue performance pursuant to the terms of the Contract Documents.

ARTICLE 39 GOVERNING LAW AND VENUE

- 39.1 The Construction Contract shall be governed by the laws of the State of Florida.
- 39.2 Venue of any action arising out of this Agreement shall exclusively be in Broward County, Florida or in the US District Court for the Southern District of Florida.

ARTICLE 40 RIGHTS AND REMEDIES

- 40.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 41 SUCCESSORS, ASSIGNS AND ASSIGNMENT

- 41.1 The Owner and the Construction Manager each binds itself, its partners, successors, assigns and legal

representatives to the other party in respect to all covenants, agreements and obligations contained in the Construction Contract. It is agreed that the Construction Manager shall not assign, transfer, convey or otherwise dispose of the contract or its right, title and interest in and to the same or any part thereof, without previous consent of the Owner and concurred to by the Sureties.

- 41.2 If requested by Owner the Construction Manager agrees to assign all Subcontracts required for performance of this Contract to the Owner upon the Owner or Facilities Project Manager's determination that Construction Manager has defaulted under the Contract Documents. The Construction Manager shall include in all Subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier, in the event of Construction Manager's default under this Contract, to consent to the assignment of their subcontracts to the Owner.

ARTICLE 42
NOTICE OF CLAIM: WAIVER OF REMEDIES;
NO DAMAGES FOR DELAY

- 42.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
- .01 All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - .02 The Construction Manager must submit a Notice of Claim to Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
 - .03 Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
 - .04 The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this Article.
- 42.2 After receipt of a Request for Change Order, the Owner, within a reasonable time, shall deliver to the Construction Manager its written determination of the claim.
- 42.4 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 25, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Project Consultant, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 42.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes as set forth in Articles 25 and 27. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

- 42.5 In the event it shall be determined by a Court of competent jurisdiction that the preceding provision is inapplicable or unenforceable for any reason or cause, then the Construction Manager shall be entitled to the sum of \$200 per day for each day it is actually delayed by the action of or neglect of the Owner or Project Consultant or by changes in the Work, or by any other cause of delay which is attributable to the Owner or Construction Manager and beyond the Construction Manager's control, avoidance or mitigation and without the fault or negligence of the Construction Manager and/or Subcontractor or supplier at any tier. This provision contemplates anticipated and actual loss caused by any delay and the difficulty in proving the loss. The sum set forth above, on a per diem basis, is the total amount recoverable from the Board as full and final compensation for all delay damages, consequential damages, loss of profits and/or the like. Article 42.5 compensation, if triggered as set forth in Article 42.5 of the General Conditions to the Construction Manager Agreement, are in addition to any monies due pursuant to Article 25 of the General Conditions.

ARTICLE 43 ROYALTIES AND PATENTS.

- 43.1 The Construction Manager shall pay all royalties and license fees.
- 43.2 The Construction Manager shall be responsible for all infringement of patent rights and shall assume the defense, including payment of attorney fees and costs, of any suit brought against Construction Manager and/or Owner for infringement of any United States patent or for wrongful use of proprietary information of any third party.
- 43.3 Construction Manager hereby indemnifies and shall defend and hold harmless Owner and its representatives, respectively, from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, and arising out of the use of the equipment or materials provided under this Construction Contract by Construction Manager, or out of the process of actions employed by, or on behalf of Construction Manager in connection with the performances of this Construction Contract. Construction Manager shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further, that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or its representatives.
- 43.4 Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, materials or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of the Contract Documents.
- 43.5 The indemnification pursuant to Florida Statute 725.06 and other Florida laws, etc., shall have a separate consideration of \$1.00, receipt of which is hereby acknowledged and incorporated into the project sum. This is incorporated by reference into the Bid Documentation and Specifications if any.

ARTICLE 44
RIGHT TO AUDIT PROVISIONS

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

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

ARTICLE 45 MISCELLANEOUS

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

for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

- 45.7 Electronic Mail Capabilities - The Construction Manager must have electronic mail capabilities through the World Wide Web. It is the intention of the School Board of Broward County to use electronic communication for all projects whenever possible. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 45.8 Trench Safety Act - The Construction Manager must comply with the provisions of the Trench Safety Act (Florida Statutes Section 553.66, as amended).
- 45.9 Strict Performance - 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 provisions or rights in that or any other instance.
- 45.10 Severability - If any clause or provision of this Agreement is illegal, invalid or otherwise unenforceable under present or future laws effective during the term hereof, then the remainder of the Agreement shall not be affected thereby; and in lieu of each clause or provision of this Agreement which is illegal, invalid or otherwise unenforceable, there shall be added, as part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or otherwise unenforceable clause or provision as may be possible and as may be legal, valid and enforceable.

**EXHIBIT A
CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES**

Owner

<u>Individual</u>	<u>Title</u>
	Superintendent of Schools
	Chief Facilities and Construction Officer

Owner's Representative

<u>Individual</u>	<u>Title</u>
	Project Manager

Project Consultant

<u>Individual</u>	<u>Title</u>
	Project Principal
	Project Manager
	Site Representative

Construction Manager

<u>Individual</u>	<u>Title</u>
	Project Principal
	Project Manager
	Site Superintendent

**EXHIBIT B
CONSTRUCTION MANAGER'S PERSONNEL**

PRECONSTRUCTION PHASE STAFF (included in Preconstruction Services Fee)

<u>Individual</u>	<u>Title</u>	<u>% of Time assigned to project</u>

CONSTRUCTION PHASE - OFF-SITE SUPPORT STAFF (included in Construction Management Fee unless approved in writing by Owner)

<u>Individual</u>	<u>Title</u>	<u>% of Time assigned to project</u>

CONSTRUCTION PHASE - ON-SITE SUPPORT STAFF (included in Construction Manager's lump sum General Conditions cost as part of GMP)

<u>Individual</u>	<u>Title</u>	<u>% of Time assigned to project</u>

EXHIBIT C
CHANGE ORDERS, EXTRA WORK AND CLAIMS

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

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

Labor Burden - Labor burden allowable in change orders shall be defined as employer's net *actual* cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not

union employees), and net actual cost to employers for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Construction Manager shall reduce its standard payroll tax percentages to reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

Material: Estimated material change order costs shall reflect the Construction Managers reasonably anticipated net actual cost for the *purchase* of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Construction Manager due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for change order work shall be credited to Owner if the Construction Managers provided Owner funds in time for Construction Manager to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

Equipment: Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$1000), For Construction Manager or subcontractor owned equipment, the "bare" equipment rental rates allowed *to be used* for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Construction Manager or subcontractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

- b. Unit Price Change Order Proposals - As an alternative to Lump Sum Change Order Proposals, the Owner or the Construction Manager acting with the approval of the Owner may choose the option to use Contract Unit Prices. The Construction Manager will submit within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.

- c. Cost Plus Change Order Proposals - As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including the cost or rental of small tools, minor equipment, or plant (fabrication), plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as above. Owner and Construction Manager may agree in advance in writing

on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Construction Manager's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Construction Manager and / or contractors for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Construction Manager's employees showing both base contract work as well as extra work performed by each employee.

- 5. Maximum Markup Percentage Allowable on Self-Performed Work:** With respect to pricing change orders to any Lump Sum Contract change order, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be limited to the percentage, shown on Exhibit B of the CMAR Agreement (and as outlined in General Conditions Exhibit D), of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.
- 6. Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors:** With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Construction Manager supervising the lower tier contractor's work shall be not-to-exceed 10%.
- 7. Sales and use tax (if applicable)** shall not be subject to any Markup Percentage Fee. Any sales or use tax properly payable by the Construction Managers shall be added, after computing the change order amount before tax.
- 8. As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Construction Manager's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to:** home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordination; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; comprehensive general liability insurance; auto insurance and umbrella insurance; pick-up truck costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual value of \$1,000 or less.
- 9. The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, after the net credit is computed by applying the sliding scale percentages as outlined, an adjustment will be made to the computed credit by multiplying the credit amount by a factor of .975 to arrive at a final credit amount to be issued to the owner. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.**
- 10. In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to accomplish the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.**
- 11. The Construction Manager's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are**

not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Construction Manager to proceed with the changes without waiting for the Construction Manager's proposal or for the formal change order to be issued. In the case of an unacceptable Construction Manager proposal, the Owner may direct the Construction Manager to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Construction Manager by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

12. In the event the Construction Manager has been required to furnish performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Construction Manager's net increase or decrease in bond premium costs associated with change orders to Construction Manager's base contract price. Contract adjustments related to any such increased or decreased costs of related to insurance and/or bond coverage will not be subject to any Construction Manager markup for overhead and profit.
13. **Accurate Change Order Pricing Information:** Construction Manager agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Construction Manager further agrees to submit change order proposals with cost and pricing data, which is accurate, complete, current and in accordance with the terms of the contract with respect to pricing of change orders.
14. **Right to Verify Change Order Pricing Information:** Construction Manager agrees that any designated Owner's representative will have the right to examine the Construction Manager's records to verify the accuracy and appropriateness of the pricing data used to price change proposals. Even after a Change Order Proposal has been approved, Construction Manager agrees that if the Owner later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the contract regarding pricing of change orders; then an appropriate contract price reduction will be made.
15. **Requirements for Detailed Change Order Pricing Information:** Construction Manager agrees to provide and require all subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Article. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Construction Manager's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.
16. The Construction Manager is required to notify the owner within seven (7) calendar days subsequent to an event that may lead to a claim by the Construction Manager or Subcontractor of any tier. The claim is to be perfected and the Owner provided a full accounting for all costs associated with the claim within thirty (30) calendar days, unless the Construction Manager requests in writing and the Owner agrees to a specific extension of this time. The reason for the extension is to be made known to the Owner in the written request. Any claims that are not promptly and accurately reported in keeping with this article

will not be entertained. The Owner has the right to verify amounts claimed in the same manner as described in paragraphs 14 and 15 of this Exhibit.

17. The Construction Manager shall not be paid overhead and profit on any additional cost item of work, not included in GMP, for which the Construction Manager should have reasonably discovered in their review of Contract documents (see also Agreement Section 3.3.2).

SAMPLE

**EXHIBIT D
INDUSTRY BENCHMARKS**

Description	Rate	Base
Design Fee	6%-7%	GMP
Preconstruction Fee	0.5%-1%	GMP
General Conditions	7%-8%	GMP (exlcude CM Fee)
OH & P Fee (CM Fee)	2%-5%	Cost of Work
GL Insurance A	0.45%	Revenue
Subcontract Bonds B	1%-1.3%	GMP
P&P Bond CM	1%	GMP/CM Revenue
Labor Burden C	30%-40%	Labor

A CCIP ranges from 3 to 4% of subcontract revenue

B Including discount would result in 0.75%

C Burden includes: FICA, FUTA, SUTA, MED/DENT, STD, LTD, W/C and Compensated Absences.

REQUIRED RESPONSE FORM - Proposer Information

RFQ Issued Date: _____ **Title of Request or Solicitation:** _____

Note: For Joint Venture Proposals, see instructions at the bottom of this page.

PROPOSER INFORMATION

PROPOSER'S (COMPANY) NAME: _____

STREET ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

PROPOSER TELEPHONE: _____ PROPOSER FAX: _____

CONTACT PERSON: _____

CONTACT TELEPHONE: _____ CONTACT FAX: _____

E-MAIL ADDRESS TO SEND PURCHASE ORDERS TO: _____

INTERNET E-MAIL ADDRESS: _____ INTERNET URL: _____

PROPOSER FIRM - TAX IDENTIFICATION NUMBER: _____

Proposal Certification

I hereby certify that:

1. I am submitting the following information as my Firm's Qualifications and I am an Officer of the Firm.
2. Proposer has not discussed, or compared the Qualifications with other Proposers and has not colluded with any other Proposer.
3. Proposer, its principals, or their lobbyists has not provided any campaign contributions to School Board Members during the period in which the Proposer is attempting to qualify, to provide Design Services to the School Board. This period of limitation shall commence at the time of the "cone of silence" period for any solicitation for a competitive procurement as described by:
 - School Board Policy 3320, Part II, Section HH
 - School Board Policy 1007, Section 5.4 Campaign Contribution Fundraising
4. Proposer acknowledges that all information contained herein is part of the public record as defined by the State of Florida Sunshine and Public Records Laws.
- 5 All responses, data and information contained in this Proposal are true and accurate
6. Proposer agrees to acceptance of the contents of all pages in this Request for Qualifications (RFQ) including all attachments and the contents of all issued Addenda.
7. Proposer agrees to be bound to all terms, conditions and requirements identified in the Request for Qualifications, its Addenda and its Attachments.
8. The Proposer understands that everything contained herein are requirements of this RFQ and failure to comply will result in disqualification of the Qualifications submitted.

Signature of Proposer's Officer (**blue ink preferred on original**)

Date

Name of Proposer's Officer

Title of Proposer's Officer.

JOINT VENTURES: In the event multiple Proposers submit a joint Proposal in response to the RFQ, a single Proposer shall be identified as the Prime Proposer. If offering a joint Proposal, Prime Proposer must include the name and address of all parties of the joint Proposal. Prime Proposer shall provide all bonding and insurance requirements, execute any Contract, complete the **REQUIRED RESPONSE FORM** shown herein, have overall and complete accountability to resolve any dispute arising within this contract. Only a single contract with one Proposer shall be acceptable. Prime Proposer responsibilities shall include, but not be limited to, performing of overall contract administration, preside over other Proposers participating or present at SBBC meetings, oversee preparation of reports and presentations, and file any notice of protest and final protest as described herein. Prime Proposer shall also prepare and present a consolidated invoice(s) for services performed. SBBC shall issue only one check for each consolidated invoice to the Prime Proposer for services performed. Prime Proposer shall remain responsible for performing services associated with response to this RFQ.



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 00220: Submitting Firm's Request for Information

To: Purchasing Agent
 Procurement & Warehousing Services Department
 7720 W. Oakland Park Blvd., Suite 323
 Sunrise, Florida 33351

Date: _____

(For Owner's Use Only) Firm's RFI No.:
--

Project: RFQ/RFP#, Project #, & Location #:
 Facility Name: Project Consultant:

- | | |
|--|--|
| <p>Category:</p> <input type="checkbox"/> Information not shown on RFQ/RFP Documents
<input type="checkbox"/> Interpretation of RFQ/RFP Documents
<input type="checkbox"/> Conflict in RFQ/RFP Requirements
<input type="checkbox"/> Coordination / Site Visit | <p>Reference:</p> <input type="checkbox"/> Drawing Reference
<input type="checkbox"/> Spec/Project Manual Reference
<input type="checkbox"/> Other: |
|--|--|

Subject:

Description:

Submitting Firm:
 Company Name
 & Address:

Phone:

By: _____
 Signature

 Title

Replies will be issued by Addendum and made available on Demand Star to all prospective Submitting Firms. No verbal or written interpretations of the RFQ / RFP Documents will be given to individual Submitting Firms.



The School Board of Broward County, Florida
Office of Facilities & Construction
2301 N.W. 26th Street
Fort Lauderdale, Florida 33311

(754) 321-1500

Authorization To Proceed
Check One: PSA [] / CSA [] / Term []

Form with fields for Project No., Location No., Project Title, Facility Name, Project Consultant, Date, SBBC P.O. No./Line No., RFQ No., Project Manager, and ATP Start Date (Day1).

Under the provisions of your continuing term contract for professional services, you are hereby authorized to proceed with the following services for the project referenced above.

- Checkboxes for Schematic Design, Design Development, Construction Documents, Bidding, Construction Contract Administration, Warranty, and Other Services: Attached.

This Authorization to Proceed is subject to the following attachments:

- Attachments list with checkboxes: Pre-Construction Services and Fee Schedule (CMAR Only), Executed A.R.F. (Agenda Request Form), Professional Services Required, Project Schedule, Professional Fees, Previous ATP's.

The scope of the required services is specified on the Professional Services Required with a Fixed Limit of Construction Cost (FLCC) for this project as indicated below:

Table with 3 columns: Original FLCC, Current Cost Estimate, Revised FLCC by ATP. Each column has a dollar sign and a blank line for input.

The following professional services will be provided by the Project Consultant as a normal part of its Basic Services for the Project listed above:

Table with 3 columns: Item (1-7), Discipline, and Description.

Authorization To Proceed

Project Schedule

Project No.: _____ Project Title _____

Location No.: _____

Facility Name: _____

Project Consultant: _____

The required project schedule milestones for this project are presented below. (Mandatory)

ACTIVITY – Must Match (PSA/CSA/Term Per RFQ Phasing Plan) # Days per PSA/CSA/Term RFQ Schedule Final Negotiated Schedule	Date Required Or Estimated Time Period Start	Finish
Phase I – Scope Validation	Day 1	Day
Phase I – Plan Review	Day	Day
Phase I – Schematic Design	Day	Day
Phase I – Plan Review	Day	Day
Phase II – Design Development Submittal – 30% CDs	Day	Day
Phase II – Plan Review	Day	Day
Phase III – Construction Document – 50% CDs	Day	Day
Phase III – Plan Review	Day	Day
Phase III – Construction Document – 60% CDs	Day	Day
Phase III – Plan Review	Day	Day
Phase III – Submittal – 90% CDs	Day	Day
Phase III – Review – 90 % CDs	Day	Day
Phase III – Submittal – 100% CDs	Day	Day
Phase III – Review – 100% CDs	Day	Day
Phase III – Bldg. Dept. Review – 100% CDs	Day	Day
Plan Revision / Re-Submittal to Bldg. Dept. –	Day	Day
Bldg. Dept. Follow-up Review –	Day	Day
Plan Approval –	Day	Day
Procurement & Award/Bidding	Day	Day
Construction Through Close-out (Contract Administration) –	Day	Day
Warranty –	Day	Day



The School Board of Broward County, Florida
Office of Facilities & Construction
2301 N.W. 26th Street
Fort Lauderdale, Florida 33311

(754) 321-1500

Consultant's Authorization To Proceed

Professional Fees

Project No. & Location No.: _____ Project Title: _____

Facility Name: _____

Project Consultant: _____

Phase Must Match PSA/CSA/Term RFQ	Original Basic Fee	Fee Authorized by ATP		Fee Previously Authorized		Fee Balance	
Phase I – Scope Validation	\$	\$	%	\$	%	\$	%
Phase I – Schematic Design	\$	\$	%	\$	%	\$	%
Phase II – Design Development Submittal – 30% CDs	\$	\$	%	\$	%	\$	%
Phase II – Construction Document – 50% CDs / 60% CDs	\$	\$	%	\$	%	\$	%
Phase III – 90% CDs	\$	\$	%	\$	%	\$	%
Phase III – 100% CDs	\$	\$	%	\$	%	\$	%
Pre-Construction Services (CMAR Only)	\$	\$	%	\$	%	\$	%
Phase IV - Procurement & Award/Bidding	\$	\$	%	\$	%	\$	%
Phase V – Construction Through Close-out (Contract Administration)	\$	\$	%	\$	%	\$	%
Phase IV – Warranty	\$	\$	%	\$	%	\$	%
Allowance – Document Reproduction	\$	\$	%	\$	%	\$	%
Allowance – Specific Purpose (list) Site Survey, GPR, Other	\$	\$	%	\$	%	\$	%
Allowance – Non-Destructive / Destructive Testing	\$	\$	%	\$	%	\$	%
Supplement Services	\$	\$	%	\$	%	\$	%
Total	\$	\$	%	\$	%	\$	%

Payment for these services shall be made in accordance with the provisions of the Professional Services Agreement

Approved By Consultant				Certified by SBBC			
Name:				Name: Shelley N. Meloni			
Title:				Title: Director, Pre-Construction			
Signature:	_____	Date:	_____	Signature:	_____	Date:	_____
Certified By SBBC / Owner's Representative				Approval by SBBC			
Name:				Name:			
Title:				Title:			
Signature:	_____	Date:	_____	Signature:	_____	Date:	_____

This document is part of the Professional Services Agreement for Open End Services between The School Board of Broward County, Florida (Owner) and the Project Consultant and is incorporated by reference into the terms and conditions of that agreement.

ACH Payment Agreement Form (ACH CREDITS)

VENDOR NAME:

Authorization Agreement

I (we) hereby authorize **The School Board of Broward County** to initiate automatic deposits (credits) to my account at the financial institution named below. Additionally, I authorize **The School Board of Broward County** to make the necessary debit entries/adjustments in the event that a credit entry is made in error.

Further, I agree not to hold **The School Board of Broward County** responsible for any delay or loss of funds due to incorrect or incomplete information supplied by me or by my financial institution or due to an error on the part of my financial institution in depositing funds to my account.

This agreement will remain in effect until **The School Board of Broward County** receives written notification of cancellation from me or my financial institution and that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Account Information

Name of Bank or Financial Institution: _____

Branch/ State: _____

Routing No: _____

Account No: _____	Checking <input type="checkbox"/>	Savings <input type="checkbox"/>
VENDOR AREA: Remittance Confirmation: (please select one) _____	Fax <input type="checkbox"/>	Email <input type="checkbox"/>
Federal Identification No. Vendor _____	TAX ID# <input type="checkbox"/>	SS# <input type="checkbox"/>

Update Purchase Order Fax & Email Address

Centralized Fax Number _____ Dept. _____

Centralized Email _____ Dept. _____

Centralized Phone No. _____ Dept. _____

Signature

Authorized Signature
(Primary) and Business title: _____ Date: _____

Authorized Signature
(Joint) and Business title: _____ Date: _____

Please attach a VOIDED check to verify bank details and routing number.

This form must be returned to: SBBC – Purchasing – Data Strategy Group
7720 W. Oakland Park Blvd, Sunrise FL 33351 call: 754-321-0516 or fax # 754-321-0533

For Use by DATA STRATEGY GROUP

Vendor Account# _____ Date Entered _____ Initials: _____

School Board of Broward County
ACH payment agreement form

The School Board of Broward County, Florida

RFQ # and NAME _____

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST AND CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP

In accordance with the RFQ, each Proposer must disclose, in its RFQ, the names of any employees who are employed by Proposer who are also an employee of SBBC. Persons identified below may have obligations and restrictions applicable to them under Chapter 112, Florida Statutes.

Name of Proposer's Employee	SBBC Title or Position of Proposer's Employee	SBBC Department/ School of Proposer's Employee
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Check one of the following and sign:

- I hereby affirm that there are no known persons employed by Proposer who are also an employee of SBBC.
- I hereby affirm that all known persons who are employed by Proposer, who are also an employee of SBBC, have been identified above.

Signature

Company Name

Name of Official

Business Address

City, State, Zip Code



Reuse
List First Submission Date & RFQ #

PROJECT RELEVANCY / REFERENCE FORM (CMAR)

Instructions to Submitting Firm: Submit a separate Form for each related project listed in the firm's RFQ Response. It is the firm's responsibility to provide accurate, current information for each project and Owner listed under sections 1, 2, and 3. Item 2 below along with any attachments about relevant projects will be reviewed and evaluated for up to 3.5 points per project. References will equal up to 1.5 points per project. This form does not count towards the page count for Relevant Projects, nor should it be used in lieu of the relevant project information. In addition, if this reference is a "Reuse" of a reference previously submitted on a prior qualification statement, complete the "Reuse" section located at the top right of this form. A new form must be completed, but the "Reuse" indicates that this project was previously evaluated and the first date it was submitted for evaluation. Include the original solicitation submission date of reference and RFQ response for which it was submitted (the first date reference was used).

1. NAME OF PRIME FIRM: Click here to enter prime firm name		RFQ #: RFQ#
SOLICITATION FOR: <input type="checkbox"/> Design/Builder <input type="checkbox"/> CM at-Risk (project-specific) <input type="checkbox"/> CM at-Risk (continuing contract) <input type="checkbox"/> Other:		
RELEVANT PROJECT NAME/TITLE & BRIEF SCOPE, INCLUDING APPROACH INFORMATION (list your firm's scope on the project):		
OWNER'S PROJECT NO.:	PROJECT LOCATION (Address, City, State & Zip):	
CONSTRUCTION DELIVERY METHOD: <input type="checkbox"/> Traditional (D/B/B) <input type="checkbox"/> CM at-Risk <input type="checkbox"/> Design-Build		
ORIGINAL EST. COST OF CONSTRUCTION:	PLANNED CONSTRUCTION SCHEDULE (DAYS):	
FINAL CONSTRUCTION COST:	ACTUAL CONSTRUCTION SCHEDULE (DAYS):	
PROPOSER'S CONTRACTUAL RELATIONSHIP TO OWNER ON THIS PROJECT:	PLANNED COMPLETION DATE: Month/Year	
	ACTUAL COMPLETION DATE: Month/Year	
MINORITY/WOMEN BUSINESS ENTERPRISE OR SMALL BUSINESS ENTERPRISE <u>PERCENTAGE GOALS VS ACTUAL PERCENTAGES:</u>		
3. PROJECT OWNER:		OFFICE / DEPARTMENT:
REFERENCE NAME:		TITLE:
E-MAIL:	PHONE NO.:	
ADDRESS (Address, City, State & Zip): Click here to enter address		

PROJECT RELEVANCY /REFERENCE FORM
Scoring Criteria for Relevant Projects / References (CMAR)

BELOW IS TO BE COMPLETED BCPS:

Reference		<i>(Circle only one box for each to indicate response received and the points allocated to the response.)</i>		
a.	Is the information listed in Section 2 , above, accurate? (Staff to verify) (0.25 points)	YES (0.25 Points)	NO (0 Points)	<i>If "no", explain under 4.d. Clarification</i>
b.	How would you rate the overall performance of this firm in terms of: (1 Point Maximum) <ul style="list-style-type: none"> ▪ Timely completion of the project; ▪ Cost effectiveness (was project within budget); ▪ Quality of the communications/coordination with the project team members; ▪ Responsiveness to the owner; and ▪ Quality of the project. 	GOOD (1 Point)	FAIR (or N/A) (0.5 Points)	POOR (0 Points)
c.	Would you do business with this firm again? (0.25 Points) <i>If "no" or "maybe", explain under 4.d. Clarification</i>	YES (0.25Points)	NO (0 Points)	MAYBE (0 Points)
d.	Clarification, if required (as it relates to Section 2 , above):			

Relevant Project

• Relevancy of Project and Scope

a. Is the cost of construction for the relevant project within range of the RFQ budget? (.75 Point) <i>(If the cost of construction for the relevant project provided is greater than or equal to the budget for this RFQ then the full point will be given. If it is smaller, the following criteria will be used to score the percent difference (RFQ Budget – Relevant Project Final Construction Cost). (RFQ Budget)</i> <i>For packaged and grouped schools RFQs, the lowest school's RFQ Budget will be utilized for this calculation.)</i>			
<u>(.75 Point)</u> 0-30%	<u>(0.5 Points)</u> >30-60%	<u>(0.25 Points)</u> >60%	
b. How relevant is the scope provided to the scope of this RFQ? (1.5 Points)			
<u>(1.5 Points)</u> Very	<u>(1.0 Point)</u> Somewhat	<u>(0.5 Points)</u> Minimal	<u>(0 Points)</u> Not at all
Comments:			
c. Project is a public educational facility project in the state of Florida (required to follow SREF). (0.5 Points)			
<u>(1.0 Points)</u> YES	<u>(0 Points)</u> NO		
d. Project is an educational facility project in the United States of America. (0.25 Points)			
<u>(0.25 Points)</u> YES	<u>(0 Points)</u> NO		
Name of SBBC representative completing this form (print name):			
Signatory: <i>By signing and submitting this project reference form, I hereby attest that I am authorized to provide this information and that the above information is true, accurate and correct to the best of my knowledge (Staff Signature)</i>			
Signature:			Date:

Reference Total Score: _____

Relevant Project Total Score: _____

Qualification Selection Evaluation Committee CMAR RFQ Scoring Rubric

This RFQ rubric is to provide guidance to the Qualification Selection Evaluation Committee during evaluations of Construction Management at Risk Services Qualifications Statements. In each category shown below, recommendations are provided to include a breakdown for Excellent, Good, Fair, or Poor. QSEC members will be asked to associate specific points to the response of each specific Submitting Firm. The breakdown below should be used to assist QSEC members in assigning points to the quality of each submittal. The maximum point values for sections scored by the committee range from five (5) points to fifteen (15) points.

Part A Evaluation (One Hundred (100) Points Maximum)

Executive Summary (Five (5) Points Maximum):

- Excellent – 5 points
- Good – 3 to 4 points
- Fair – 2 points
- Poor – 0 to 1 point
- Not Included – 0 points

Executive Summary is within page count limitations (see section C1 of the RFQ).

Single Site Procurements

Firm should demonstrate:

- An understanding the scope of services for this RFQ.
- The capability to deliver scope outlined in this RFQ.
- The ability compliance with terms and conditions.

Note: For Multiple Site Procurements and Packages

- Firm should demonstrate items listed for Single Site, but briefly demonstrates an understanding of any site-specific needs that may exist.

Approach (Ten (10) Points Maximum):

- Excellent – 8 to 10 points
- Good – 5 to 7 points
- Fair – 3 to 4 points
- Poor – 0 to 2 points
- Not Included – 0 points

Approach is within page count limitations (see section C1 of the RFQ).

Firm should demonstrate:

- Knowledge of site or sites through the presentation of approach.
 - o Multiple Site Procurements or packages may have the same or a similar approach.
 - o Firm should state that similar approaches would be used for different sites or present variances in the approach based on the site.
- The willingness and ability to meet the project schedule(s) and project budget(s).
- The ability to meet the M/WBE participation commitments made for the construction phase without incurring additional project costs.

Note: For Packages

- Firm should demonstrate the ability to meet design deliverables for multiple projects occurring simultaneously on time and on budget and the ability to oversee multiple projects occurring simultaneously.

Firm should state the office location from which this work will be conducted and the distance from the project site for single-site procurements or, for multiple site procurements, the distance from specific site locations or from SBBC's facilities department (as required by section C1 of the RFQ).

Current Work Load Overall (Seven (7) Points Maximum):

- Excellent – 6 to 7 points
- Good – 4 to 5 points
- Fair – 2 to 3 points
- Poor – 0 to 1 point
- Not Included – 0 points

Current Work Load Overall is within page count limitations (see section C1 of the RFQ).

- Firm should provide list of current projects including SBBC projects.
- Firm should demonstrate workload capacity through the firm's:
 - o number of staff
 - o current assignments of staff
 - o stage of project completion
 - o qualifications and roles of staff members presented for this project
- Note: Critical area for review. Firm needs to demonstrate staff is available and capable of

Current Work Load with SBBC (Three (3) Points Maximum):

- Scored by district staff

Firm Experience and Qualifications (Fifteen (15) Points Maximum):

- Excellent – 14 to 15 points
- Good – 10 to 13 points
- Fair – 5 to 9 points
- Poor – 0 to 4 points
- Not Included – 0 points

Firm Experience and Qualifications is within page count limitations (see section C2 of the RFQ).

- Firm should demonstrate experience with:
 - o Delivery method for this project (i.e. CMAR, Design Bid Build, etc.)
 - o Primary Experience
 - SBBC projects,
 - Other Florida Public K-12 Projects (includes charter schools), and/or
 - Other Florida Education Projects (i.e. colleges, universities, private K-12 schools);
 - o Secondary Experience
 - Other similar sized and scoped projects in Broward County,
 - Government projects with similar scopes to this RFQ, and/or
 - Other projects with similar sizes and scopes.

Committee member should review the number of years of firm's experience within applicable categories; review how recent the experience is with the applicable categories, with the most weight given to Recent Experience (last 5 years) within primary experience categories with SBBC Projects (1st) and Educational Projects in Florida (2nd). Other projects with similar size and scopes are secondary.

Relevant Projects / References (Fifteen (15) Points Maximum):

- Scored by district staff

Team Structure (Ten (10) Points Maximum):

- Excellent – 8 to 10 points
- Good – 5 to 7 points
- Fair – 3 to 4 points
- Poor – 0 to 2 points
- Not Included – 0 points

Team Structure is within page count limitations (see Section D1 of the RFQ).

Firm should provide:

- Its team structure including subconsultants in its team structure.
- The preconstruction services offered with in-house staff and/or those services for which it chose to use subconsultants.

Key Personnel (Fifteen (15) Points Maximum) (see Section D2 of the RFQ):

- Excellent – 14 to 15 points
- Good – 10 to 13 points
- Fair – 5 to 9 points
- Poor – 0 to 4 points
- Not Included – 0 points

Firm should:

- List staff to be included in this project
- Identify:
 - o Principal in charge of SBBC Projects
 - o Key Personnel, including, but not limited to:
 - Project Manager
 - Construction Manager
 - Project Superintendent
- Provide:
 - o An Organizational Chart for the project
 - o Resumes for all key staff on project, firm's principals, including subconsultants personnel on project and principals

Note: For Packages with multiple schools

Firm should demonstrate that its staff would be available to manager multiple projects that will have similar schedules without delays.

Committee member should review firm's staff members and subconsultants staff intended to be used on this project with the following:

- o SBBC projects
- o Other Florida Public K-12 Projects
- o Other Florida Educational Projects
- o Other similar sized and scoped projects in Broward County
- o Government projects with similar scopes to this RFQ
- o Other projects with similar sizes and scopes

Supplier Diversity and Outreach Program (Twenty (20) points):

- Scored by district staff

Part B Evaluation – Presentations (Forty (40) Points Maximum)**Approach to pre-construction (Six (6) Points Maximum) (See section 5.3.1 of the RFQ):**

Excellent – 6 points
 Good – 4 to 5 points
 Fair – 3 points
 Poor – 0 to 2 points
 Not Included – 0 points

Firm should:

- Demonstrate the ability to provide pre-construction services that will deliver a quality project that addresses any site-specific constraints including the approach to work around the constraints.
- Provide details on its approach to meeting M/WBE commitments during this phase with its management team through its recruitment made in its qualifications statement. This should include outreach efforts.
- Address its relationship with its protégé and what role the protégé will play in the project, if a mentor/protégé relationship has been included as part of the Qualifications Statement.

Approach to construction (Eight (8) Points Maximum) (See section 5.3.1 of the RFQ):

Excellent – 7 to 8 points
 Good – 5 to 6 points
 Fair – 3 to 4 points
 Poor – 1 to 2 points
 Not Included – 0 points

Firm should:

- Demonstrate the ability to obtain competitive bids that will deliver a quality project.
- Provide details on its approach to meeting M/WBE commitments made in its qualifications statement for construction and discuss how the firm will meet those goals without incurring additional costs.
- Present examples of similar projects and the role it fulfilled.

Ability to meet schedule (Eight (8) Points Maximum) (See section 5.3.1 of the RFQ):

Excellent – 7 to 8 points
 Good – 5 to 6 points
 Fair – 3 to 4 points
 Poor – 1 to 2 points
 Not Included – 0 points

Firm should:

- Demonstrate the ability to deliver the project with an established construction schedule.
- Provide examples of experience with similar schedules on similar projects.

Availability of resources (Seven (7) Points Maximum) (See section 5.3.1 of the RFQ):

Excellent – 7 points
 Good – 5 to 6 points
 Fair – 3 to 4 points
 Poor – 1 to 2 points
 Not Included – 0 points

Firm should:

- Demonstrate the ability to deliver a quality project and discuss any site-specific constraints including the approach to work around the constraints.
- Provide details on its approach to meeting M/WBE commitments made in its qualifications statement and discuss how the firm will meet those goals without incurring additional costs.

Key Personnel (Eleven (11) maximum points) (See Section 5.3.2 of the RFQ):

- Excellent – 10 to 11 points
- Good – 7 to 9 points
- Fair – 4 to 6 points
- Poor – 0 to 3 points
- Not Included – 0 points

Firm should:

- List staff to be included in this project.
- Identify:
 - o Principal in charge of SBBC Projects
 - o Key Personnel, including, but not limited to:
 - Project Manager
 - Construction Manager
 - Project Superintendent
 - o Key Personnel for both Submitting Firm and Subconsultant(s)
- Demonstrate the experience and ability of staff on the team to meet deliver a successful project.
- Have all members listed as key personnel on its team (Prime and Subconsultants) physically present for the Part B Evaluation.