

**AMENDMENT  
TO  
PROFESSIONAL SERVICES AGREEMENT  
(For Construction Management At Risk Project)**

**BETWEEN  
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
AND PROJECT CONSULTANT  
FOR  
ARCHITECTURAL/ENGINEERING SERVICES**

This Amendment to the Professional Services Agreement ("Agreement") between The School Board of Broward County, Florida and Project Consultant for architectural/engineering services dated the 7th of September, 1999 is entered into this 18<sup>th</sup> day of April, 2006 by and between the School Board of Broward County, Florida (hereinafter referred to as the (Owner) and ZELCH AND MCMAHON, ARCHITECTS (hereinafter referred to as Project Consultant),

**For the project known as: Western High School/Renovations, Remodeling and Additions  
Project Number: 2831-99-02  
FLCC: \$3,215,688**

WHEREAS, the Owner and Project Consultant acknowledge and agree that the Agreement between Owner and Project Consultant dated the 7th of September, 1999 is in full force and effect except to the extent this Amendment modifies specific provisions thereof;

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 the Project Consultant, the parties agree as follows:

The fees in Article 5 applicable to Articles 2.6 and 2.7 are amended as follows: an increase in fees for Phases I and II by \$49,160 and Phases IV, V and VI by \$18,210 totaling \$67,370.

The Fixed Limit of Construction Cost (FLCC) is amended as indicated above and the Scope of Services and Project Schedule attached hereto replace those in the above-mentioned Agreements.

Amend the Professional Liability Provisions to the requirements included in Attachment 3 to this amendment.

~~Articles 2.5, 2.6 and 2.7 [including all sub-parts] of the Agreement are hereby replaced with the following new Articles 2.5, 2.6 and 2.7 as a result of converting the project delivery method to Construction Management At Risk.~~

~~**2.5 Phase IV Bidding and Award of Contract**~~

~~**2.5.1** The Project Consultant shall make all changes to the documents as required by the Owner's and Construction Manager's review of the documents by issuing a written recommendation to the Owner, at no additional cost and resolve initially all questions of constructability, code compliance, compliance with Owner standards, or~~

other issues raised by the Owner or Construction Manager during their reviews of the documents. The Owner and Construction Manager will retain the documents submitted at this phase.

- ~~2.5.2 Bid Documents Approvals and Printing: At this stage the Construction Manager assumes the leadership responsibility for the project team. This however, shall not relieve the Project Consultants responsibilities as they relate to this contract for this phase and subsequent phases. Upon obtaining all necessary approvals of the Construction Documents, and review by Construction Manager and Owner approval by the Owner of the latest Statement of Probable Construction Cost, the Project Consultant shall assist the Construction Manager in obtaining bids and 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.~~
- ~~2.5.3 The Construction Manager will issue the Bid Documents to prospective bidders and keep a complete "List of Bidders."~~
- ~~2.5.4 The Project Consultant shall render initial interpretations and clarifications of the drawings and specifications in a written format, supplemented by appropriate graphics. The Chief Building Official [authority having jurisdiction] shall make all final determinations and/or interpretations as it relates to building code issues.~~
- ~~2.5.5 The Project Consultant shall attend a pre-bid conference as scheduled by Construction Manager and requested by the Owner and Construction Manager.~~
- ~~2.5.6 The Project Consultant shall prepare addenda, if any are required, for the Owner to issue to all prospective bidders. No addenda shall be issued without the Construction Manager=s review and Owner's approval and if dimensional changes or extensive graphic changes are required the drawing sheets shall be revised and issued as addendum drawings as directed by Owner.~~
- ~~2.5.7 The Project Consultant shall be present at the bid opening with the Owner=s staff.~~
- ~~2.5.8 The Project Consultant shall participate with Owner in evaluating the bids and shall provide a written recommendation for bid award.~~
- ~~2.5.9 If the Guaranteed Maximum Price received from the Construction Manager (as that term is defined in the Agreement between Owner and Construction Manager) exceeds the Fixed Limit of Construction Cost the Owner will either:~~
- ~~.1 Approve the increase of Project costs and approve the GMP or,~~
  - ~~.2 Direct the Project Consultant to revise the Project scope or quality, or both, as approved by the Owner, and the Construction Manager will rebid the Project, or~~
  - ~~.3 Suspend or abandon the Project, or~~
  - ~~.4 Bid out the project to another CM At Risk Construction Manager or General Contractor.~~
- ~~2.5.10 Under Article 2.5.9.2 above, the Project Consultant shall, without additional compensation, modify the~~

Construction Documents as necessary to bring the project within the Fixed Limit of Construction Cost. The providing of such service shall be the limit of the Project Consultant's responsibility in this regard and having done so, the Project Consultant shall be compensated in accordance with this Agreement. The Owner and Construction Manager may recognize exceptional construction market cost fluctuations before exercising the option provided in Article 2.5.9.2 above. The Owner agrees to discuss this issue with the Project Consultant and Construction Manager prior to exercising this option.

~~2.5.11 If an estimate or cost analysis is required by the Owner for this phase, the Project Consultant shall utilize the previously established independent cost estimator, or a replacement acceptable to the Owner, to analyze bids and to assist in the preparation of any modified bidding documents or re-bid documents that may be required to ensure successful bidding within the Fixed Limit of Construction Cost.~~

## ~~2.6 Phase V Administration of the Construction Contract:~~

~~2.6.1 The Construction Administration Phase will begin with the approval of the GMP and Construction Manager Agreement by the Owner and will end when the Construction Manager's final Payment Certificate is approved by the Owner and after the one (1) year warranty period has expired. During this period, the Project Consultant shall provide Administration of the Construction Contract as set forth in the construction contract documents (hereafter referred to and defined as the "Contract Documents") between the Owner and the Construction Manager, as basic services.~~

~~2.6.2 The Project Consultant, as a representative of the Owner during the Construction Phase, shall advise and consult with the Owner and Construction Manager within the limits established by this Agreement and the Contract Documents. The Project Consultant shall contemporaneously provide Owner and Construction Manager with copies of all communications between Project Consultant and Construction Manager and others concerning matters material to the cost, time, sequence, scope, performance or requirements of the project.~~

~~2.6.3 The Project Consultant and the Project Consultant's respective Sub-Consultants shall attend all key construction events as necessary to ascertain the progress of the Project and to determine in general if the Work is proceeding in accordance with the Contract Documents and the Project Schedule. A minimum of at least one site visit per week will be required by the Project Consultant. The Sub-Consultant will be required to visit the site at least once a week when their respective portion of the work is in progress.~~

~~.1 The Project Consultant shall visit the site at least once per week to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents and Project Schedule. The Project Consultant shall coordinate the timing of these visits with the Owner's Representative and Construction Manager so as to permit joint observations of the progress of the Work and discussions about project issues. On the basis of on-site observations as a Consultant, the Project Consultant shall keep Owner and Construction Manager informed of the progress and quality of the Work. The Project Consultant shall promptly submit to Owner and Construction Manager a detailed written report of the results of each visit to the site, and copies of all field reports and notes of meetings with Construction Manager, subcontractors of any tier or suppliers.~~

~~.2 The Project Consultant shall, based upon its on-site visits, promptly report to Owner and Construction Manager any defects and deficiencies in the Work coming to the attention of Project Consultant and shall endeavor to guard the Owner against defects and deficiencies in the Work. This obligation is not~~

~~reduced or limited by the fact that others, such as the UBCI, are undertaking inspection for or on behalf of the Owner. The Project Consultant shall make on-site observations utilizing the same personnel over the course of the Work.~~

~~— The Project Consultant shall assist the Owner in determining the cost of reinspections due to the Contractor's failure to perform. Any changes in personnel must be in writing and issued to the Owner and Construction Manager.~~

~~.3 — The Project Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.~~

~~2.6.4 — The Project Consultant shall at all times have access to the Work where ever it is in preparation or progress. The Project Consultant and the Sub-Consultants shall review and advise the Owner and Construction Manager as to whether the Construction Manager is making timely, accurate, and complete notations on the "Project Record Documents" and maintaining various other administrative records as required by the Contract Documents. In addition the Owner may at its discretion require the Project Consultant and all Sub-Consultants to submit additional written materials or forms to the Owner and Construction Manager relating to or regarding the Project or its progress. Complete notations to the As built drawings shall include, but not be limited to all changes due to RFI's, ASI's, CUD's, CCD's and CO's, in addition to the changes recorded by the Contractor, as noted above.~~

~~2.6.5 — The Project Consultant shall initially interpret matters and provide recommendations concerning performance of Owner and Construction Manager under requirements of the Contract Documents on written request of either Owner or Construction Manager. The Project Consultants response to such requests shall be made with reasonable promptness and within any time limits agreed upon. The Project Consultant shall render written advisory decisions, only upon the Owner's request, within a reasonable time, on all claims, disputes and other matters in question between Owner and Construction Manager relating to the execution or progress of the Work or the interpretation of the Contract Documents.~~

~~2.6.6 — All initial interpretations and advisory decisions of the Project Consultant shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. In the capacity of initial interpreter the Project Consultant shall endeavor to secure faithful performance by both the Owner and Construction Manager, and shall not show partiality to either. The Owner shall be the final interpreter of any and all matters pertaining to the performance of the Project Consultant and Construction Manager, in lieu thereof.~~

~~2.6.7 — The Project Consultant shall have authority to recommend rejection of Work which does not conform to the Contract Documents. The Project Consultant shall not have authority to stop the Work without approval of the Owner. Whenever, in the Project Consultant's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, Project Consultant may recommend special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed, but Project Consultant shall take such action only after consultation with Owner. The Project Consultant's monitoring of such additional special testing or inspections is a part of the Basic Services. Owner shall furnish all such tests, inspections and reports that are required by law or by the Contract Documents or that it has previously approved in writing, without waiving its right to reimbursement~~

from Construction Manager. However, neither this authority of the Project Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty of responsibility of the Project Consultant to Construction Manager or other third parties performing portions of the Work.

~~2.6.8 The Project Consultant shall promptly review, and take other appropriate action upon Construction Manager's submittals such as shop drawings, product data and samples, but only for conformance with the design concept of the Contract Documents. Such action shall be taken within fourteen (14) days of receipt by Project Consultant unless Owner, Construction Manager and Project Consultant otherwise mutually agree. Project Consultant's review shall not constitute review or approval of safety precautions or of construction means, methods, techniques, sequences or procedures. Project Consultant shall maintain a log of all submittals made and shall compare the submittals with Construction Manager's progress schedule. The Consultant shall not approve changes to the contract or substitutions through the regular submittal process but will utilize those respective methods specified in the Contract Documents. The Project Consultant shall be compensated for reviewing re-submittals after the first re-submittal of a respective submittal as a reimbursable expense with the Owner reimbursed by the Construction Manager under provisions of the Contract Documents.~~

~~2.6.9 The Project Consultant shall coordinate with the Owner and Construction Manager concerning the Owner's and Construction Manager's required review of Request for Proposals, Change Orders, CUD's and Construction Change Directives. The Project Consultant shall:~~

- ~~.1 Meet with the Owner's Project Manager and Cost Estimator and Construction Manager prior to the preparation and execution of Request for Proposals, Contingency Use Directives and Change Order items to ensure that proposed changes comply with the intent of the Project's scope and construction schedule and whether the Construction Manager is entitled to additional sums or contract time for the proposed Work.~~
- ~~.2 Reconcile the Project Consultant's analysis of Request for Proposals, Construction Change Directives, Contingency Use Directives and Change Order amounts with an analysis provided by the independent cost estimator and provide the Owner and Construction Manager with a recommendation concerning the respective cost studies.~~
- ~~.3 Submit written and graphic information documenting proposed changes for formal review by the Owner's Project Manager and Cost Estimator and Construction Manager prior to the issuance to the Construction Manager.~~
- ~~.4 Review and indicate concurrence through signing Request for Proposals for Owner's authorization in accordance with the Contract Documents, shall have authority to order minor changes in the Work not involving an adjustment in the contract sum or an extension of the contract time and which are not inconsistent with the intent of the Contract Documents. Such minor changes shall be effected by written order issued through Owner. The Basic Services shall include providing recommendations concerning Request for Proposals, Contingency Use Directives and Change Orders, and the preparation, permitting and processing of Request for Proposals, Change Orders and Construction Change Directives. This Article shall not supersede Articles 2.9.1.14 or 2.9.1.16.~~
- ~~.5 Process, prepare and issue contract modification documents, Request for Proposals, Contingency Use~~

Directives and Change Orders, in a timely manner and not allow the period required for evaluation, preparation or to issue such documents to exceed fourteen (14) days. The Project Consultant shall provide written notification to the Owner and Construction Manager concerning those modification documents requiring more than fourteen (14) days processing time with an attached explanation of the circumstances requiring longer processing time.

~~.6 All final decisions with respect to substitutions, Request for Proposals, Change Orders, and other contract modifications shall be at the sole determination of the Owner.~~

~~2.6.10 The Project Consultant shall conduct thorough site observations, make recommendations and otherwise assist Owner and Construction Manager in determining the dates of Substantial Completion and Final Completion, shall review, approve and forward to Owner for Owner's review, written warranties and related documents required by the Contract Documents and assembled by Construction Manager, and shall certify a final certificate for payment. At substantial completion, the Project Consultant shall prepare a punch list of observed items requiring correction, completion or replacement by Construction Manager. The Project Consultant shall administer the Construction Manager's submittal of various closeout submittals including warranty documents, operations and maintenance materials, extra materials, and other closeout submittals as required by the Contract Documents. The Project Consultant and the Sub-Consultants shall verify and confirm the Construction Manager's successful demonstration of equipment and systems and the training of the Owner's personnel as required by the Contract Documents. Project Consultant shall inspect the Project upon final completion to determine compliance with the Contract Documents and, upon so determining, prepare and execute the required forms and other documents indicating that the Work is completed in compliance with the Contract Documents.~~

~~2.6.11 The Project Consultant shall within sixty (60) days of final acceptance provide the Owner with prints and electronic media copies of the original drawings, which the Project Consultant has revised to conditions based on information furnished by the Construction Manager as Project Record Documents. These prints and electronic media copies shall become the property of the Owner. Submittal of these documents to the Owner is a condition of final payment of construction support fees to the Project Consultant.~~

~~2.6.12 The Project Consultant shall assist Owner in determining amounts owing to Construction Manager based on observation at the site and an evaluation of Construction Manager's applications for payment and shall certify Certificates for Payment of such amounts as provided in the contract documents and in such forms as the Owner may request. The certification of the Certificate for Payment shall constitute the representation by Project Consultant to Owner based on Project Consultant's observation at the site and the data comprising Construction Manager's applications for payment, that the work has progressed to the point indicated; the quality of the work is in substantial accordance with the contract documents (subject to an evaluation of the work for substantial conformance with the contract documents upon substantial completion, to the results of any subsequent test by or performed under the contract documents, to minor deviations from the contract documents cited prior to completion, and to any specific qualification stated in the Certificate for Payment); and that the Construction Manager is entitled to the amount certified. However, the certification of the Certificate of Payment shall not be a representation that Project Consultant has made any examination, other than information which has come to Project Consultant's attention, to ascertain how and for what purpose Construction Manager has used the monies paid by the Owner.~~

**~~2.7 Phase VI Warranty Administration:~~**

~~2.7.1 For one year following substantial completion of the construction project, the Project Consultant shall assist Owner, without additional compensation, in securing correction of defects, and shall in the sixth and eleventh months make inspections of the project with the Owner and Construction Manager and report observed discrepancies to Owner and Construction Manager in writing.~~

**Authority:**

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

**Attachments:**

1. Project Schedule
2. Scope of Work
3. Professional Liability Insurance

IN WITNESS THEREOF, the parties hereto, the School Board of Broward County, Florida (Owner) and ZELCH AND MCMAHON, ARCHITECTS (Project Consultant) have caused this Amendment 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.


**For the School Board of Broward County, Florida**

(SEAL)

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

  
\_\_\_\_\_  
Superintendent of Schools  
Franklin L. Till, Jr.


  
\_\_\_\_\_  
Chair  
Benjamin J. Williams

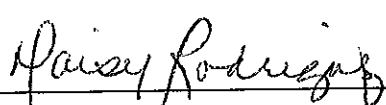
Approved: 


\_\_\_\_\_  
School Board Attorney

**For the Project Consultant**

**ATTEST ZELCH AND MCMAHON,  
ARCHITECTS**

  
\_\_\_\_\_  
Witness  
Valencia M. Dublin

  
\_\_\_\_\_  
Witness  
Daisy Rodriguez

  
\_\_\_\_\_  
Robert E. McMahon, Partner in the Firm

ACKNOWLEDGEMENT

STATE OF FLORIDA

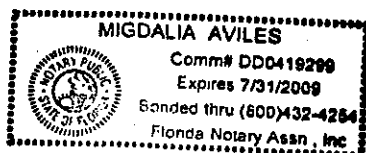
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1 day of March, 2006 by  
Robert of Zelch & McMahon  
on behalf of the corporation or agency.

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

My commission expires: 7-31-09

(SEAL)



Migdalia Aviles  
Signature, Notary Public

migdalia Aviles  
Printed Name of Notary

DD0419299  
Notary's Commission

**The School Board of Broward County, Florida**

**Professional Services Agreement  
ATTACHMENT 1:**

**Project Schedule**

Project No: 2831-99-02  
Project Title: Renovations, Remodeling and Addition  
Facility Name: Western High School

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The required project schedule milestones for this project are presented below. Items marked undetermined require additional development and submittal of the Consultant's Project Development Schedule as required by the Professional Services Agreement for this project.

<b>ACTIVITY</b>	<b>ESTIMATED TIME PERIOD</b>
<b>Phase V: Administration of the Construction Manager's Contract through Substantial Completion</b>	<b>12 Months from Issuance of Notice to Proceed for Construction</b>
<b>Final Completion Date:</b>	<b>30 Days from Substantial Completion</b>
<b>Phase VI: Warranty</b>	<b>365 Days from Substantial Completion</b>

**The School Board of Broward County, Florida**

**Professional Services Agreement  
ATTACHMENT 2:**

**PROJECT SCOPE**

Project No: 2831-99-02  
Project Title: Renovations, Remodeling and Addition  
Facility Name: Western High School

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**Summary of the Project's Scope of Work:**

01. Remodel existing student dining and teacher's lunchroom.
02. Replace air handlers in Buildings #01, #02 and #04.
03. Electrical service to power heat strips.
04. Direct digital HVAC controls.
05. Minor chiller plant improvements – revise piping layout and pumps to improve capacity.
06. Replacement marker and tack boards in designated classrooms.
07. ADA replacement room signage for designated rooms.
08. ADA hardware upgrades for designated doors.
09. ADA remodeling for Restrooms 101C and 101D.
10. ADA renovation to bleacher seating.
11. Addition to Athletic Equipment Storage – Building #09.
12. Handicapped lift to the stage in the auditorium.
13. Testing/monitoring of existing Indoor Air Quality to determine HVAC Design Criteria. Fees for revisions to the HVAC and Electrical plans, if present indoor air quality is found to be inadequate, are not included. The exact extent of revisions, if any, will be determined with the SBBC based upon testing and recommendations.

## **The School Board of Broward County**

### **Professional Services Agreement**

#### **ATTACHMENT 3: PROFESSIONAL LIABILITY INSURANCE**

9.2.2 Professional Liability (Errors and Omissions): The Project Consultant shall procure Professional Liability Insurance in the manner described herein. The deductible shall not be more than Fifty Thousand (\$50,000) Dollars for each policy and must be indicated on the certificate of insurance. The insurance policy shall be non-cancelable and the limits of the Professional Liability Insurance Policy shall be as follows:

9.2.2.1 This section not used.

9.2.2.2. Projects require a practice policy with a per claim/annual aggregate in accordance with the specifications delineated below relative to the cumulative construction value of all projects:

- .1 One Million (\$1,000,000) Dollars on a per claim/One Million (\$1,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is less than Five Million (\$5,000,000) Dollars.
- .2 One Million (\$1,000,000) Dollars on a per claim/Three Million (\$3,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is between Five Million One (\$5,000,001) Dollars to Ten Million (\$10,000,000) Dollars.
- .3 One Million (\$1,000,000) Dollars on a per claim/Five Million (\$5,000,000) Dollars annual aggregate basis for Project Consultants whose cumulative construction value for all Board contracts is greater than Ten Million One (\$10,000,001) Dollars.

The Project Consultant shall be required to maintain the practice policy in accordance with the above specifications for a period commencing with execution of this contract and terminating three years after final completion of said projects. In addition, the project consultant shall provide information regarding the total claims against said practice policy, on an annual basis for the term of the contract upon and terminating three years after final completion of the project (Claims/Loss history should be forwarded to the Risk Management Department), as The School Board of Broward County, Florida, deems appropriate.

The Professional Liability insurance must provide for all sums which the Project Consultant shall be legally obligated to pay as damages for claims arising out of or relating to the negligent services performed by the Project Consultant or any person employed or acting on the Project Consultant's behalf (including, but not limited to, Sub-Consultants) in connection with this Agreement. If the Owner, at its sole discretion, agrees that such coverage is not commercially reasonably available, the Owner may, at its discretion, authorize the Project Consultant to alter the coverage by substituting a lower aggregate or changing any other terms and conditions of the coverage (including but not limited to deductible amounts) based upon the scope of the project.