



The School Board of Broward County, Florida
Supply Management & Logistics Department
 7720 W. Oakland Park Blvd. - Suite 323
 Sunrise, Fl 33351
 (754) 321-0505

Document 00505: Notice of Intent

Date: September 27, 2013

To: Michael Boss, President
 Company Name MBR Construction, Inc.
 & Address: 1020 NW 51st Street
 Ft. Lauderdale, Fl 33309

Pick Up :

Please be advised that we will recommend to The School Board of Broward County, Florida, at its meeting on November 5, 2013 that a contract be awarded to your firm for the project named below.

Bid No: **2012-06-FC**
 Contract Title: **Construction Services Emergency Projects (CSEP) VI**

Pursuant to Document 00200, Instructions to Bidders, the contract must be executed by your firm in quadruplicate (with submittal of certificates of insurance, and other post-award information listed below) within 20 calendar days from the date of your receipt (as established by delivery receipts or registered mail) of the Notice of Award (Document 00510).

This Notice of Intent, if awarded, is provided to you to facilitate and expedite the formal award and execution of your contract.

Attached to this Notice of Intent, if awarded, you will find copies of the following documents:

Number	Document Title
00520	Agreement Form

The following documents are required in the bidding documents and must be executed and submitted in order to process your contract:

Number	Document Title
00455	Background Screening of Contractual Personnel
00700	Insurance Certificates indicating compliance with all coverage requirements including but not limited to General Liability, Auto Liability, Worker Compensation, Products/Completed Operations Liability

The Agreement Form attached to this Notice of Intent, if awarded, is to be executed in quadruplicate by your surety. Please ensure that the corporate name appearing on each of the Agreement Form and the Certificates of Insurance are precisely the same as that appearing on your corporate seal. Additionally, the dates appearing on the Agreement Form, (and the separate Power of Attorney documents attached to each of the Agreement Forms) must be the date of the meeting that The School Board of Broward County, Florida considers the Award of Contract as indicated above. Please be advised that all costs, if any, incurred by the contractor with providing these required documents shall be borne by the contractor. In the event that the Board does not award the contract, all documents shall be returned to the contractor.

The required insurance coverage is included in Document 00700. These documents must be submitted as indicated below.

Other post-award submittals as listed above and otherwise required by **Article 11 of Document 00200, Instructions to Bidders**, should be delivered in quadruplicate to the Office of Supply Management and Logistics not later than 20 days from the date of your receipt of Notice. The Owner will not issue a Notice: Be Ready to Proceed (Document 00545) until it has received, reviewed and approved (where specified) all post-award submittals.

Submit your documents to Denis Herrmann, Manager, Design & Construction Contracts. If you have any questions concerning the attached documents or other matters related to the execution of the contract, please contact Denis Herrmann, Manager, Design & Construction Contracts at (754) 321-0505. We are looking forward to working with your Firm towards a successful and rewarding project.

Sincerely,



Carol Barker, Acting Director
Office of Supply Management and Logistics

CB/DH/PK:pk

Attachments:

- Document 00520, Agreement Form (Four Copies of Signature Pages Only)

Copies:

- Denis Herrmann, Director, Design and Construction Contracts
 Project File

DOCUMENT 00520

FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT made and entered into this 5th day of November in the year 2013 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "Owner") and

MBR CONSTRUCTION, INC.

1020 NW 51st Street
Fort Lauderdale, FL 33309

FEIN# 65-0373938

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

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

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

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

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

NOW THEREFORE, in exchange for the mutual covenants and promises set forth herein agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1 -DEFINITIONS

1.01 **Definitions:**

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

1.03 **Owner** - The School Board of Broward County, Florida. (SBBC). The School

Board of Broward County, Florida, through its Board, which is the entity authorized to approve Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project and final payment.

- 1.04 **Owner's Representatives** - The Chief or designee.
- 1.05 **Contractors** - Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.
- 1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.
- 1.07 **Project Manager** - An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. May be a Project Manager I, II, III, or a combination of Project Managers based on the complexity and size of the Project.
- 1.08 **Project** - The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the Project identified in the project manual and as contemplated by the Owner's approved Scope of Work and budget.
- 1.09 **Phase** - A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion. A Phase may be designated for completion by the Owner's own forces or by other contractors.
- 1.10 **Punch List** - A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/or inconsistent with the Contract Documents.
- 1.11 **Subcontractor** - A person or entity other than a material man or laborer who enters into a Contract with a Contractor for the performance of any part of the Work. The term "Subcontractor" is referred to throughout the Construction Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contract or subcontract with the Owner.
- 1.12 **Fixed Limit of Construction (FLCC)** - Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value budgeted by the Owner for construction of the Project.
- 1.13 **Submittals** - Are prepared by the Contractor or those working on its behalf

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

- 1.14 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the Work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether Substantial Completion has been achieved.
- 1.15 **Sub consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Project Consultant to furnish professional services to the project.
- 1.16 **Superintendent or Contractor and/or Contractor's Project Manager** - An English-speaking executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.
- 1.17 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.
- 1.18 **Surety** - The entity which is bound by the Payment and Performance Bonds with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for its payment of all debts pertaining thereto.
- 1.19 **Building Code Inspector and Plans Examiners (BCI): Employees of The School Board of Broward County, Florida, and others designated by the Chief Building Official, who are certified by Florida Statutes 468, 633 and 553 a BCI by the State of Florida Department to provide plan review and inspections for code compliance.** A BCI may provide plan review, construction inspection for code compliance and report non-compliant work to the Project Manager, Project Consultant and Contractors under contract with the Owner.
- 1.20 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contractor by the Contract Documents,

whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project or Services.

- 1.21 **Written Notice** - Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice. Electronic, FAX or other telephonic transmission **shall not be** considered as a written notice.
- 1.22 **Notice to Proceed (NTP)**- A document issued by the Owner's representative to the Contractor authorizing all or a portion of the Work to proceed. The NTP includes and incorporates the Project Cost Sheet and Estimating Recap form and establishes the Contract amount for the Work encompassed by the NTP.
- 1.23 **Senior Project Manager** - An employee of the Owner referred to hereinafter as the "SENIOR PM" and who is the direct Supervisor of the Project Manager.
- 1.24 **Estimating Order** - Written request on a form within the Agreement to the Contractor executed by the Chief requesting an estimate for a specific Project.
- 1.25 **Project Cost Sheet** - A form within the Agreement completed by the Contractor for the purpose of providing an estimate for a specific Project.
- 1.26 **Estimating Recap Form** - A form within the Agreement completed by the Contractor for the purpose of summarizing the estimate provided in the Project Cost Sheet for a specific Project.
- 1.27 **RS Means Facilities Construction Cost Data** - The document published by RS Means, A division of Reed Construction Publishers and Consultants, 700 Longwater Drive, Norwell MA, 02061, U.S.A., referenced in the Agreement that establishes the costs that form the Basis of Compensation referenced in Document 00520, Form of Agreement, Article 4, and elsewhere within the various contract documents.
- 1.28 **RS Means CostWorks** - Software that replicates and automates the data contained in the RS Means Facilities Construction Cost Data resulting with the Project Cost Sheet required in the Agreement.4
- 1.29 **Contract Documents** - Collectively those documents which define the Scope of Work and how such Work shall be performed. The documents which constitute the Contract Documents include but are not limited to this Agreement and associated Bid Documents, Construction Documents, Notice to proceed, Addendum and other revisions to the Construction Documents, and Supplemental Conditions to the Contract and Construction Documents.

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

ARTICLE 2 CONTRACTOR'S RESPONSIBILITIES

2.01 Representations:

- 2.01.01 As to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with Ch. 489, F.S., Florida Building Code, and any and all applicable codes, laws and ordinances as amended. The Contractor shall only subcontract work it is not licensed to perform. The Contractor shall self-perform the majority of the Work of this Agreement.
- 2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations. Chapter 6A-2 .0 III (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities, ("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the Florida Building Code and Florida Fire Prevention Code; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner's Representative or designee serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.
- 2.01.03 The Contractor's work shall conform to Owner's specifications, including but not limited to, plans and specifications, Owner's Design and Materials Standards, Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.
- 2.01.04 The Contractor must comply with the Owner's M/WBE goals as set forth by the Owner in the Bid Document for Construction Services Emergency Projects.

ARTICLE 3 -THE OWNER'S RESPONSIBILITIES

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

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

3.03 Project Management:

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

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

ARTICLE 4 -BASIS OF COMPENSATION

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

BASE BID: TABLE A

Work Category	Item No. 1		Item No. 2	
General Contractor	Single Fixed Multiplier(SFM)	<u>1.000</u> (Place SFM Here)	Single Fixed Multiplier	<u>N/A</u> (Place SFM Here)
	Contract Amount	\$10,000,000	Contract Amount	\$50,000,000
	Renewable Amount	\$2,000,000	Renewable Amount	\$10,000,000

Roofing Contractor	Single Fixed Multiplier	<u>N/A</u> (Place SFM Here)	Single Fixed Multiplier	<u>N/A</u> (Place SFM Here)
	Contract Amount	\$10,000,000	Contract Amount	\$50,000,000
	Renewable Amount	\$2,000,000	Renewable Amount	\$10,000,000
Electrical Contractor and Fire Alarms	Single Fixed Multiplier	<u>N/A</u> (Place SFM Here)	Single Fixed Multiplier	<u>N/A</u> (Place SFM Here)
	Contract Amount	\$4,000,000	Contract Amount	\$8,000,000
	Renewable Amount	\$1,000,000	Renewable Amount	\$2,000,000
Mechanical Contractor	Single Fixed Multiplier	<u>N/A</u> (Place SFM Here)	Single Fixed Multiplier	<u>N/A</u> (Place SFM Here)
	Contract Amount	\$4,000,000	Contract Amount	\$8,000,000
	Renewable Amount	\$1,000,000	Renewable Amount	\$2,000,000

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

4.02 **Reimbursements:**

4.02.01 Reimbursements will be made for land survey data, construction testing services, performance and payment bonds, builder's risk insurance, Owner's I.D. badges and permitting fees only with the prior written approval of the Owner's Representative. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner's

Representative. **(Reimbursements are not subject to Single Fixed Multiplier.)**

4.03 Estimates:

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

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

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

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

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

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

- a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.
- b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
- c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.

- d. Tools and equipment with an individual cost of \$500 or less.
- e. Cell phone charges in excess of \$100 per authorized employee as approved by the Owner.
- f. Discretionary labor benefits such as, but not limited to; cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.
- g. Overtime charges not previously authorized in writing by the Owner.
- h. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 -ESTIMATING ORDER

- 5.01 The Chief or Designee(s) shall authorize each Estimating Order. The Contractor shall not be entitled to reimbursement for the preparation of the estimate, Estimating Recap Form and Project Cost Sheet. The Contractor shall not prepare the estimate, Estimating Recap Form and Project Cost Sheet without an Estimating Order. The Estimating Order and the attachments will describe the extent of the Work to be performed by the Contractor. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.
- 5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of the Estimating Recap Form, Project Cost Sheet and all other documents specified within the Estimating Order and attachments. The Estimating Recap Form, Project Cost Sheet and other documents will be reviewed by the Project Manager and, if found to be acceptable by the Project Manager, the Notice to Proceed will be presented to the Contractor for approval. The Notice to Proceed shall signed as Approved by the Chief Facilities & Construction Officer or Designee(s).
- 5.03 If, after initial review of the Estimating Recap Form, Project Cost Sheet and any other documents submitted by the Contractor to the Project Manager, the Notice to Proceed cannot be signed, an extended review period may be initiated.
- 5.04 The Notice to Proceed shall indicate the Purchase Order number and line number and shall be provided to the Contractor once fully executed by the Office of Facilities and Construction.

ARTICLE 6 -PURCHASE ORDERS

- 6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to Proceed. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.**
- 6.02 The date for commencing work (Start Date) shall not be more than ten (10) calendar days from the start date stated on the Notice to Proceed, unless previously agreed to in writing by the Contractor and Project Manager. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, shall be reported in writing to the Project Manager within the time specified in Document 00700, General Conditions of the Contract.
- 6.03 The Work shall be defined by the Notice to Proceed, Estimating Recap Form, Project Cost Sheet, Construction Documents, Estimating Order and attachments, and RS Means Facilities Construction Cost Data, or, RS Means CostWorks software.

ARTICLE 7-PAYMENTS TO THE CONTRACTOR

- 7.01 Payment shall be made according to Documents 00800 and 01290 incorporated herein by reference.
- 7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, inspections, testing, forms and documents required by Owner have been provided by Contractor to the Project Manager. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project in accordance with the Florida Local Government Prompt Payment Act.
- 7.01.02 The Contractor shall submit a certificate for payment in the form provided in Document 01290.
- 7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.
- 7.01.04 Payments are due and payable in accordance with the Florida Local Government Prompt Payment Act.
- 7.01.05 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Project Manager, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall include with its billing, in either electronic or hard copy format, the following supporting information,

and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

ARTICLE 8 -INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700 As amended.

ARTICLE 9-INSURANCE

9.01 Supplemental Insurance Requirements:

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

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

9.01.03 **Builders' Risk Insurance:** The Owner's Designated Risk Management Administrator shall review the scope of each project under this Agreement to determine whether Builders' Risk Insurance shall be required. If the Owner's Risk Management Administrator determines that Builders' Risk Insurance is required the Contractor shall carry Builders' Risk Insurance for the perils of fire, vandalism, malicious mischief, windstorm, hurricane, theft, building collapse, in addition to perils identified within the extended coverage. Such coverage shall be for one hundred percent (100%) of the contract value to include both hard and soft costs. Such policies shall be written to protect the Contractor and Owner as their interests may appear. The premium cost for Builder's Risk Insurance shall be reimbursable in accordance with Article 4.02.01, Reimbursements herein.

ARTICLE 10 -GENERAL PROVISIONS

10.01 **Performance:**

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's staff, unless otherwise approved in writing by the Owner's Representative or Designee(s). Said approval shall not be

construed as constituting an agreement between the Owner and said other person or firm.

10.02 Term of Agreement:

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

10.02.02 No single Project shall exceed the amount stated in Article 4.01, Table A, herein unless the project costs exceeds said amount due to unforeseen circumstances relating to construction. Additionally, the Agreement shall also expire when the total value of work awarded reaches the Contract amount and any approved extension amount specified in Article 4.01, Table A.

10.03 Time for Performance:

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

10.04 Time Extensions:

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

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

10.05 Termination of Agreement:

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

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

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. In such event, Contractor shall not be entitled to any additional payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 Termination for Convenience:

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

or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

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

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

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

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to

audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law.

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

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

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

10.08 **Contract Documents:**

10.08.01 Owner shall retain ownership of all contract documents.

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

10.09 **Electronic Media:**

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

10.10 Attachments and References:

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

10.11 Extent of Agreement:

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

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

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

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

10.12 Strict Performance:

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

10.13 Prompt and Satisfactory Correction:

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

10.14 Successors and Assigns:

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

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this

Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11- PUBLIC ENTITY CRIME INFORMATION STATEMENT

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

ARTICLE 12 -NOTICES

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

Party:		Address:
Owner:	The School Board of Broward County, Florida	7720 West Oakland Park Blvd. Suite 323 Sunrise, FL 33351 Attn: Carol Barker, Acting Director Supply Management and Logistics Department
With Copy To:	The School Board of Broward County, Florida	7720 West Oakland Park Blvd. Suite 323 Sunrise, FL 33351 Attn: Denis Herrmann, Manager, Design & Construction Contracts
Contractor:	MBR Construction, Inc.	1020 NW 51 st Street Ft. Lauderdale, Fl 33309 ATTN: Michael Boss, President
Surety:	Liberty Mutual Surety	2055 Sugarloaf Circle Duluth, GA 30097
Surety's Agent:	Brown & Brown of Florida, Inc.	1201 West Cypress Creek Road Suite 130 Fort Lauderdale, Fl 33309 ATTN: Michael Holmes, Vice President

Project Consultant: To be assigned per project

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

ARTICLE 13 -AUTHORITY PROVISION

13.0 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 14 - NON-DISCRIMINATION PROVISION

14.01 The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation. See Article 49, Document 00700, General Conditions of the Contract.

ARTICLE 15 - CAPTION PROVISION

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

ARTICLE 16 - ASSIGNMENT PROVISIONS

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

ARTICLE 17 - EXCESS FUNDS PROVISION

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

In witness thereof, the said Contractor, MBR Construction, Inc., and the Owner, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

OWNER

CONTRACTOR

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

MBR Construction, Inc.

SEAL

SEAL

By:

Laurie Rich Levinson, Chair

By:

(Michael Boss, President)

Attest Secretary

Witness or Attest Secretary (Contractor)

Robert W. Runcie
Superintendent of Schools

By: _____
(Printed Name and Title)

Approved as to Form and Legal Content:

By:

Office of General Counsel

**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 _____, 20____.

Notary Public State of Florida

My Commission Expires:

ACKNOWLEDGMENT

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

SURETY:

By: _____
Its: _____
Date: _____

(Note to Contractors: a separate Power of Attorney is required for each bond & for the Contract Agreement (Doc 00520).

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____ of _____, 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:

(SEAL)

Signature - Notary Public

Printed Name of Notary

Notary's Commission No.

END OF DOCUMENT