

J-1 Amendment – January 22, 2014 Regular Meeting

Motion to Amend (Carried)

Motion was made by Mrs. Rich Levinson, seconded by Mrs. Korn and carried, to amend the contract amount to \$1,750,369 not to exceed, (wherever it indicates \$2 million).

EXECUTIVE SUMMARY

**Award of Contract
Program Management Services
RFQ No. 2014-31-FC**

PROJECT OVERVIEW:

Type of Contract:	Open End Services Agreement
Architect:	Not Applicable
Contractor:	URS Corporation Southern
Notice to Proceed Date:	Year to Year, Maximum of Three (3) Years
Contract Amount:	\$1,750,369 per year, not to exceed

GENERAL OVERVIEW:

This item awards a Professional Services Agreement (PSA) to URS Corporation Southern (URS) for the provision of program management services in support of the Office of Facilities Design and Construction function. The services are enumerated in Attachment 1, Scope of Work to the PSA, and include services related to:

1. Pre-Programming
2. Project Planning, Selection, and Design
3. Pre-Construction and Construction
4. Facility Opening and Project Close-Out
5. Other Basic Services
6. Annual Report

Prior to commencing the provision of specific services, staff and URS must negotiate the terms of those services based upon the negotiated fees as indicated in Article 5 of the PSA. The fee structure is prescribed in terms recommended by McGladrey LLP to the Board in its audit dated June 21, 2012.

Once the terms have been negotiated, an Authorization to Proceed (ATP), in the form of Attachment 4 to the PSA, shall be presented to the Board for approval in accordance with Article 1.1.2. When approved, the ATP shall be issued to URS in accordance with Articles 4.3.1 and 5.1.4, of the PSA by the Chief Facilities & Construction Officer (Approve Authorization to Proceed, Program Management Services, JJ-1, 1/22/14 Board Meeting).

The term of the PSA is year to year, with a maximum of three (3) years and \$1,750,369 in fees per year.

The Board approved the Request for Qualifications on June 25, 2013, and approved the PSA on July 23, 2013. The selection of URS was conducted by the Qualification Selection Evaluation Committee (QSEC) in accordance with Ch. 287.055, Florida Statutes, Board Policy 7003, and the RFQ. Several concerns were expressed during the selection process, including the attached memo, dated October 18, 2013.

To respond to these concerns, staff from Supply Management & Logistics met with representatives from the Legal and Audit Departments to address each item. After evaluating all concerns, it was determined that the process that was followed was valid, and that based on the events, there would be no basis for not moving forward with the selection.

Although the item is progressing forward for approval, staff is cognizant of areas where the process can be strengthened, and has made, or is in the process of effecting changes that will

clarify or enhance the process. The concerns and recommended improvements are outlined below:

1. Tie Vote in the Ranking of the Proposers

The RFQ indicated that provisions of Policy 3320 would apply in the event of a tie vote. The RFQ required that ranking of the top-ranked proposer be determined by each voting member's highest scoring proposer. Policy 3320 anticipates scoring based on total points, rather than a single vote cast for the top scoring proposer.

As a result of the incongruence between the RFQ and Policy 3320, staff consulted with the General Counsel's Office and requested a recess of one week to conduct a complete and diligent review of the issue.

During this recess, one of the tied proposers breached the Cone of Silence by contacting a District staff person and was deemed non-responsive. The proposer's non-responsiveness resulted with only one proposer in the top ranked position, thereby eliminating the tie.

Staff has incorporated language within the RFQ form for future use that clearly identifies how a "tie" is to be broken, in the event there is more than one firm having the most first place rankings among QSEC members.

2. Cone of Silence

The RFQ prohibited contact with District staff other than the person identified to be contacted by the proposers. This is consistent with Board Policy 3320, which states, "All communications regarding the solicitation shall be directed to the designated staff member..." and with Board Policy 1100B, which states, "A LOBBYIST (AS DEFINED HEREIN) FOR A PROPOSER IS PROHIBITED FROM HAVING ANY COMMUNICATIONS CONCERNING ANY SOLICITATION FOR A COMPETITIVE PROCUREMENT WITH ANY SCHOOL BOARD MEMBER, THE SUPERINTENDENT OF SCHOOLS, ANY EVALUATION COMMITTEE MEMBER, OR ANY EMPLOYEE OF THE SCHOOL BOARD (OTHER THAN THOSE INDIVIDUALS SPECIFIED WITHIN THE TERMS AND CONDITIONS OF THE SOLICITATION)."

Staff is in the process of improving the alignment of language within the various procurement documents (construction and general procurement) to applicable policies, particularly the Cone of Silence in Policies 3320, 1100B, and 7003.

3. Objectivity of the Scoring

The RFQ was structured in accordance with Section 287.055, Florida Statutes, which is structured as a qualifications-based selection process. Evaluations of RFQs are by nature subjective. Subjectivity does not cause a scoring decision to be arbitrary or improper.

Section 287.055, Florida Statutes, states in part, "In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to

meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency...”.

The requirements stated in the RFQ, including the selection process, conforms to the statutory requirements and is consistent with RFQs prepared by three separate agencies reviewed by staff during the preparation of the RFQ.

Staff shall continue to explore opportunities to make the scoring of select portions of an RFQ more objective. Recognizing each procurement is unique, there may still be opportunities to standardize the scoring of select portions of an evaluation in similar fashion to how we score cost or M/WBE in other procurements.

4. Vendor Knowledge of the Cone of Silence

The RFQ included the provisions of the Cone of Silence in two separate locations. During the pre-bid conference, staff read the Cone of Silence provisions aloud to the audience, which included representatives of all four proposers. The QSEC Chair reads the Cone of Silence provisions aloud at the commencement of every QSEC meeting, including the meetings relating to the selection of the Program Manager. Despite such efforts, two proposers breached the Cone of Silence and were deemed non-responsive.

Staff will continue to seek ways to enhance the awareness among the vendor community of the Cone of Silence provisions of an RFQ and emphasize that all communications relative to procurement must only be directed to the appropriate purchasing agent. Additionally, staff shall make vendors better aware that issues of concern associated with terms and conditions of a particular RFQ need to be presented during the applicable protest window.

5. Composition of QSEC

In accordance with Board Policy 7003 and the QSEC by-laws, staff and the Chair ensure that a quorum of the members exists prior to commencing committee business. Two meetings were conducted in the course of the selection process and one (1) member not present at the first meeting for the short listing attended the second meeting for the final selection. A third meeting was conducted after the final selection meeting was recessed in order to present staff's recommendation to the QSEC.

Although the District is not required to do so, staff and the Chair consulted with the General Counsel's Office and confirmed that a proper quorum exists and the committee business could proceed.

Staff shall strive to maintain the same composition of QSEC members throughout the entire process of any given procurement, particularly for those considered "high profile."

6. Roles of the Auditing and Legal Departments

Staff recognizes the appropriate roles of the Auditing and Legal departments during the QSEC process. Both serve as technical advisors and can provide input to QSEC during its meetings. Audit may ask questions and offer comments as a technical assistant,

recognizing that the Chair retains the discretion to lead the meetings and set direction.

7. Legal Counsel Attendance at QSEC

The General Counsel's Office should be in attendance as a technical assistant, particularly for "high profile" procurements.

The Office of the General Counsel is available to attend QSEC meetings when needed.

8. Breaches to the Cone of Silence

In the event of any future breaches to the Cone of Silence, QSEC members shall be fully informed of the circumstances involved with such breaches.

9. QSEC Members' Abstention

During the third meeting in the selection of the Program Manager, staff presented its recommendation in the form of the attached Bid Tabulation (Exhibit 2). When a vote to accept staff's recommendation was taken, one (1) member abstained from voting. Subsequently staff inquired as to the abstention and the member indicated a conflict did not exist.

QSEC members shall not be allowed to abstain from any vote, unless a voting conflict of interest exists under Chapter 112, Florida Statutes. Every effort shall be made to review the circumstances associated with a conflict and educate the QSEC member as to why there is or is not such a conflict. QSEC members should identify conflicts of interest to District staff in advance of any meeting.

Staff shall present an abstaining member with the attached Form 8B Memorandum of Voting Conflict.

1.8.14

Written by: Denis Herrmann/12/6/13
& Shelley Meloni/12/10/13

Approved by: _____



Date: _____

1/8/14

**AGREEMENT FOR OPEN END SERVICES FOR
PROGRAM MANAGEMENT SERVICES**

**BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND PROGRAM MANAGER**

THIS AGREEMENT, made this 22nd day of January in the year Two Thousand Fourteen, by and between **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA** (hereinafter called the "**Owner**" "**SBBC**" and/or "**Board**"), and:

URS CORPORATION SOUTHERN

In accordance with Sections 255.103, 1013.45 Florida Statutes, and State Requirements for Educational Facilities 4.1 (SREF), which make provision for a contract with a firm to provide professional program management services to a school board, Owner has selected Program Manager, and Program Manager has agreed to provide the Work as set forth herein for the Project and such phases as may be required and directed from time to time at the sole discretion of Owner. It is agreed that this Agreement is an "Open End" Agreement in that the Owner will from time to time during the term of this Agreement require Work from the Program Manager on various projects. Rather than enter into separate agreements each time Work is required, the Owner and Program Manager shall enter into this Agreement. The terms and conditions of this Agreement shall govern each of the individual projects for which the Program Manager is hired to provide Work, per Attachment "1" to this Agreement, Scope of Work for Program Management Services. For each project, or group of projects, hereinafter referred to the "Project", some or all of this Work will be part of the Scope of Work for that particular project or any additional Work required by the Owner, related to the intended Scope of this Agreement. The Owner's Representative

Revised 12/16/13
Initial below
Approved by URS

will assign increments of Work to the Program Manager via an Authorization to Proceed ("ATP") (Attachment 4) which will be completed for each Project or item of Work to which the Program Manager is assigned. Each ATP, which includes forms for the Professional Services required, Project Schedule and Professional Fee, shall be completed by the Owner and Program Manager evidencing the Work, fees of the person performing the Work, time, reimbursable and supplementary Work, for that particular Project and confirming the terms and conditions of this Agreement. Each invoice will be supported with the actual hours worked by the team member, submitted to the Owner by the Program Manager in its original proposal and at the hourly rate submitted to the Owner based on the agreed hourly rates and Unit Prices. Each project assigned to the Program Manager will be identified by the Owner's assigned project numbers. The term of this Open End Agreement commences on the date of this Agreement as set forth above; no new projects may be made part of this Open End Agreement more than three (3) years from the date of this Agreement unless the contract is extended. The Owner intends to assign projects on an annual basis. The total dollar amount for all fees to be paid to the Program Manager for all projects pursuant to this Agreement may not exceed Two One Million Seven Hundred Fifty Thousand Three Hundred Sixty Nine and 00/100 Dollars (\$1,750,369(\$2,000,000.00)) per year. The initial term of this Agreement is one year beginning from the date of execution and is renewable in one-year periods for a maximum of three years. The Owner and Program Manager agree as follows:

ARTICLE 1. DEFINITIONS

1.1. Definitions:

1.1.1. The Chief Facilities & Construction Officer, Office of Facilities & Construction - An employee of The School Board of Broward County, Florida, who has the authority and responsibility for oversight and management of the specific project for the Owner. Referred to hereinafter as the Chief Facilities & Construction Officer.

- 1.1.2. **Owner** - The School Board of Broward County, Florida ("SBBC" and / or "Board"). The School Board of Broward County, Florida, through its Board, which is the entity authorized to approve all ATPs under this Agreement, Agreements, changes in the Scope of Work, change orders, fees, final acceptance of the project, and final payment.
- 1.1.3. **Owner's Representative** - The Chief Facilities & Construction Officer, or its equivalent position on the Organizational Chart.
- 1.1.4. **Contractor** - 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.
- 1.1.5. **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, hereinafter referred to as either Project Consultant or Consultant.
- 1.1.6. **Project Manager** - An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Chief Facilities & Construction Officer to manage or provide direct interface with the Program Manager.
- 1.1.7. **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.
- 1.1.8. **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.
- 1.1.9. **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.
- 1.1.10. **Subcontractor** - A person or entity other than a materialman or laborer who enters into a Contract with a Contractor or Program Manager for the performance of any part of Construction. 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 contract or subcontract with the Owner. Program Manager may be requested to retain, hire, and contract with Subcontractors as appropriate.

- 1.1.11. **Fixed Limit of Construction Cost (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.
- 1.1.12. **Guaranteed Maximum Price (GMP)** - The GMP is the total amount the Owner shall pay the Program Manager for providing Work authorized by an ATP for a Project. The GMP also is the maximum that the Owner shall pay the Contractor for the Work described in the contract documents for certain delivery methods.
- 1.1.13. **Submittals** - Documents prepared by the Contractor or those working on its behalf (Subconsultants, Subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. Contractor 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.
- 1.1.14. **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 Program 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 may not be the sole factor in determining whether Substantial Completion has been achieved.
- 1.1.15. **Subconsultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Owner to furnish professional services for the Project. Program Manager may be requested to retain, hire, and contract with Subconsultants as appropriate.
- 1.1.16. **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 Program Manager, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.
- 1.1.17. **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through The School Board of Broward County, Florida.

- 1.1.18. **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.
- 1.1.19. **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 as 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 Broward School Project Manager, Program Manager, Project Consultant and Contractors under contract with the Owner.
- 1.1.20. **Scope of Work (or "Work")** - The totality of the obligations, including professional and other services, imposed on the Program Manager by the Authorization to Proceed, including all services to be provided by the Program Manager to fulfill its obligations. The Authorization to Proceed shall constitute the required Professional Program Manager Services.
- 1.1.21. **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 an office of the corporation for who it is intended, or, if delivered or sent by registered mail or other traceable delivery service to the last business address known to the entity serving notice.
- 1.1.22. **Change Order** - A change order is issued and approved by the Owner for additions or deletions in the Scope of Work provided by the Contractor. A change order may increase or decrease the Contract amount or Time for Completion.
- 1.1.23. **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 Contractor when the Change Order work needs to be expedited. The Contractor is not required to agree to the terms offered by the Owner for the Change Order Work.
- 1.1.24. **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 resulting from unforeseen circumstances relating to Construction.
- 1.1.25. **Supplemental Services** - Those services referred to in Article 5.2.
- 1.1.26. **Authorization to Proceed** - A document in the form found in Attachment 4, issued by the Owner's Representative to the Program Manager, which, when fully executed and accompanied by a valid Purchase Order, authorizes Program Manager to proceed with all or a portion of the Professional Services.

- 1.1.27. **Program Manager** – The Program Manager has entered into an agreement with the Owner to provide Work which includes, but is not limited to, providing, procuring and managing services such as needs assessment, planning, public engagement, project definition, schedule control, cost control, coordination, administration, and management of design, construction, and close-out services. A more detailed list of the tasks and duties Program Manager may be called upon to perform is set forth in Attachment 1. The specific Scope of Work to be provided by the Program Manager will be set forth in the Authorization(s) to Proceed. It is the intent of Owner to hold the contracts with the Project Consultants, including but not limited to, Architect/Engineer (AE), or Design Criteria Professional (DCP) and construction firms, including, but not limited to, General Contractor (GC), Design-Builder (DB) or CM at-Risk and other Subconsultants. Notwithstanding the foregoing, Program Manager may be requested to retain, hire, and contract with Subconsultants and/or Subcontractors as appropriate.

ARTICLE 2 – PROGRAM MANAGER SERVICES AND RESPONSIBILITIES

- 2.1. Program Manager Services: The Program Manager Services (or “Work”) are those set forth in the Scope of Work attached as Attachment 1 hereto and incorporated by reference. It should be noted that the Program Manager Services may be some or all of those services listed on Attachment “1” to this Agreement, or other services designated by Owner. Owner is not obligated to assign Program Manager all or any of the type of services outlined in Attachment 1 nor is Owner limited to assigning the types of services outlined therein. Owner retains the power to appoint additional program managers as deemed appropriate in the sole discretion of Owner. The specific type and extent of Work to be performed by Program Manager in connection with the Project shall be at the sole discretion of Owner and shall be specifically set forth in detail in each Authorization to Proceed, unless otherwise set forth in this Agreement. This is not a requirements contract and Owner has the sole discretion to determine the projects and/or services or any division thereof it assigns within an Authorization to Proceed to either the Program Manager under this Agreement or to other program manager(s) Owner may have under contract, or to Owner’s staff or other firms or individuals as deemed to be in the best interest of Owner.

2.2. Standard of Care and Representations:

- 2.2.1. **Standard of Care:** Program Manager represents to Owner that it has the required expertise in the type of Program Management Work that will be required under this Agreement. Program Manager agrees that all Work to be provided by Program Manager pursuant to this Agreement shall be (i) subject to Owner’s reasonable review and approval and (ii) in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over either the subject Phase or the Work to be provided or performed by Program Manager hereunder. Further, Program Manager acknowledges and agrees that all Work that it provides pursuant to this Agreement shall conform with all applicable policies and procedures which may be adopted from time to time, including, but not limited to, Florida

State Board of Education Regulations, Chapter 6A-2.0111 (Educational Facilities), the Florida Department of Education's State Requirements for Educational Facilities (SREF), the Florida Building Code (FBC), the Florida Fire Protection Code, Americans With Disabilities Act (ADA), in effect at the time of execution of this Agreement, and its referenced codes and standards, Crime Prevention Through Environmental Design (CPTED) (Broward Sheriff's Office), all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), Florida Inventory of School Houses (FISH) for Office of Educational Facilities Information System (OEFIS), with SBBC FISH Guidelines, the Building Official, Building Code Consultants (BCC), any and all Design, BCC, Project Consultants, Design-Build, and Construction Contracts, agreements and General Conditions for any project being managed by Program Manager. If funding is Federal and the aggregate dollar amount or value exceeds two thousand (\$2,000) dollars, applicability of the Davis-Bacon Act and all its references will apply to any design or task and reference will be made within the specifications. Program Manager also expressly agrees to provide such other Program Manager Work as is necessary to conform to any procedures, policies, rules, or requirements imposed by any other governmental or non-governmental agency regulating Owner's work program in order to successfully perform any Authorization to Proceed assigned to Program Manager. Until final completion of the Project(s), or Work set forth in each Authorization to Proceed, Owner shall serve as the interpreter of the intent and meaning of SREF, FBC, or any other applicable codes. Program Manager shall manage all Phases assigned to it to ensure the Phases conform and comply with all budgetary, size, and scope restrictions and requirements established by the State of Florida and any of its agencies, including, but not limited to, maximum cost per student station, class size reduction and Smart School Clearinghouse Guidelines, as applicable, to be verified by Program Manager. Owner's approval of any work product produced by or for Program Manager shall not relieve Program Manager of its obligations above or to deliver complete and accurate work product necessary for the successful completion of any subject Phase pursuant to the terms of the applicable Authorization to Proceed. Program Manager shall promptly notify Owner in the event it is discovered that a Phase under an Authorization to Proceed will not be completed on time or if it is determined that costs or the overall budget will be affected. If such occurs, Program Manager shall assist in the preparation of and submission to Owner of a remediation/recovery plan, in order to minimize Owner's exposure. In the event of any conflicts in these requirements, Program Manager shall promptly notify Owner of such conflict in writing and utilize its best professional judgment to assist in the resolution of the conflict.

- 2.2.2. 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 as amended from time to time and the Florida Building Code, as amended, from time to time.

- 2.2.3. Program Manager agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida and in Broward County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the Work to be provided and performed by or for Program Manager pursuant to this Agreement.
- 2.2.4. Program Manager agrees that, when the Work to be provided hereunder relates to a professional service or construction contracting which, under Florida Statutes, requires a license, registration, certificate of authorization or some other form of legal entitlement to practice or provide such Work, Program Manager shall be responsible for ensuring that the person or entity providing such Work (whether it be Program Manager or its Subconsultant or Subcontractor) shall hold and possess such valid and current legal entitlement and shall employ and/or retain only qualified personnel to provide such Work.
- 2.2.5. The Owner's engagement of the Program Manager is based upon the Program Manager's representations to the Owner above, and further, that: (A) it is an organization of experienced professionals authorized and licensed to do business in Florida; (B) the person responsible for performance pursuant to this Agreement is currently a registered Professional Architect or Engineer in the State of Florida; (C) it is qualified, willing and able to perform Work for the Project; and that (D) it has the past experience and ability to provide Work which will meet the Owner's objectives and requirements.
- 2.2.6. As to all Work provided pursuant to this Agreement, the Program Manager shall furnish Work by experienced personnel and under the supervision of qualified and experienced Program Managers, and shall exercise a degree of care and diligence in the performance of this Work in accordance with the customary professional standards currently practiced by firms in Florida and in compliance with any and all applicable codes, laws, ordinances, etc.
- 2.2.7. Defective or deficient Work furnished by the Program Manager shall be promptly corrected by the Program Manager at no cost to Owner, without limitations to other remedies or rights of Owner's approval, acceptance or use of or payment for all or any part of Program Manager's Work hereunder or of the Project itself shall in no way alter the Program Manager's obligations or Owner's rights hereunder.
- 2.2.8. Any deviation from the Scope of Work as set forth in the Authorization to Proceed must be brought to Owner's attention in writing by Program Manager and all such deviations must be expressly approved by Owner in writing. In the event any party hereto discovers a conflict in terms between an Authorization to Proceed and this Agreement, such conflict shall be promptly brought to the attention of the other party and Owner shall resolve such conflict, having the right, at its election, to require Program Manager to perform in accordance with the more stringent interpretation or provision.

- 2.3. Except to the extent as may be expressly authorized by Owner in writing hereafter, Program Manager shall have no authority to act as the agent of Owner under this Agreement or to obligate Owner in any manner or way.
- 2.4. Program Manager hereby designates Davin Ruohomaki as its Principal in Charge (hereinafter referred to as "Principal in Charge"), with full authority to bind and obligate Program Manager on all matters arising out of or relating to this Agreement. For each Authorization to Proceed, Program Manager will designate in writing an individual to serve as Program Manager's representative (hereinafter referred to as the "Representative"). The Representative is authorized and responsible to act on behalf of Program Manager with respect to directing, coordinating, and administering all aspects of the Work to be provided and performed under the subject Authorization to Proceed. By execution of this Agreement, Program Manager acknowledges that each Representative has full authority to bind and obligate Program Manager on all matters arising out of or relating to their respective Authorization to Proceed.
- 2.5. On a monthly basis, or as otherwise required by Owner, the Program Manager and such other Program Manager officers and senior staff as may be designated by Owner, shall meet with the Superintendent, or the Superintendent's Designee, and senior staff to discuss and review the status of the Project and/or pending Authorizations to Proceed and Program Manager's performance under this Agreement. Program Manager shall prepare and provide Owner with monthly status reports throughout all Phases of each project and the overall Program.
- 2.6. The Work to be performed by Program Manager under this Agreement shall not impose upon Program Manager any obligation to assume any responsibility, duties, services, or activities assumed or required to be rendered or performed as the Architect or Engineer of Record or Construction Contractor retained by Owner.
- 2.7. Except where Program Manager has been expressly designated to furnish design and/or construction services, it is acknowledged and agreed that Program Manager does not undertake to perform any design services or services as a Design Professional in performing constructability reviews, value engineering or any other reviews involving the drawings and/or specifications for a particular Phase under the Project. Design responsibility shall remain solely with the Architect, Engineer, or Design Criteria Professional responsible for such design. Further, Program Manager shall have no responsibility for construction means, methods, or techniques, including construction site safety, all of which shall remain the sole responsibility of the Construction Contractor, Design-Builder or Construction Manager at-Risk. Provided, however, nothing in this article shall relieve Program Manager of its responsibility to promptly report in writing to Owner and to the responsible party or parties as appropriate any defects or deficiencies it becomes aware of with respect to the performance of any Architect, Engineer, Design Criteria Professional, Construction Contractor, Design-Builder or Construction Manager at-Risk associated with the Project.
- 2.8. The Program Manager's staff assigned to support the Owner's staff ("On-Site Staff") may work from Owner's offices as assigned and/or directed by Owner.

- 2.9. Program Manager's On-Site Staff at Owner's facilities will comply with all policies, procedures, and regulations applicable to Owner's employees.
- 2.10. Program Manager agrees not to divulge, furnish, or make available to any third person, firm or organization, without Owner's prior written consent, or unless incident to the proper performance of Program Manager's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the Work to be rendered by Program Manager hereunder. Program Manager further acknowledges and agrees that Owner's building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a Project improvement, including, but not limited to, buildings, auditoriums, stadiums, water treatment facilities, or other such structures (hereinafter referred to as "Exempt Documents"), are exempt from the provisions of Section 119.07(1), Florida Statutes and Article I, Section 24(a) of the Florida Constitution. Accordingly, Program Manager acknowledges and agrees that it shall maintain the confidential status of the Exempt Documents and refuse to disclose the Exempt Documents without express prior written permission from Owner. Nothing contained in this article is intended to prevent Program Manager from sharing the Exempt Documents with Owner's agents, employees, Subcontractors, Subconsultants, and other entities as contemplated herein. As part of its responsibility to maintain the confidential status of the Exempt Documents, Program Manager shall ensure that its employees are informed of this policy and act accordingly. A similar provision shall be required by Program Manager in all of its agreements with Subconsultants and Subcontractors, if any.
- 2.11. Program Manager shall cooperate with Owner's various employees, agents, consultants and contractors with respect to the development and implementation of the Project and Phase authorized by Owner thereunder. Said cooperation shall include coordinating the activities of Owner's various employees, agents, consultants and contractors on any particular Phase, as directed and required by Owner in the applicable Authorization to Proceed.
- 2.12. **PROGRAM MANAGER'S PROPOSED TEAM MEMBERS:**
- The Program Manager proposes to utilize the personnel, Subconsultants and/or Subcontractors listed in Attachment 5, List of Project Team members for all projects awarded pursuant to this Agreement.
- 2.13. Program Manager and Owner hereby agree that Program Manager and Program Manager's Sub-Consultants and Sub-Contractors as identified in Attachment 5 for the Work to be provided by Program Manager hereunder are key personnel ("Key Personnel" or "Key Person(s)"). The selection of additional Key Personnel is subject to the mutual written agreement of Owner and Program Manager. Said Key Personnel shall continue to be assigned to Owner and employed as designated (i.e., full-time, part-time, a certain percentage) in the position agreed-upon without change, removal, or replacement unless such change, removal or replacement is authorized in advance and in writing by Owner, such

authorization not to be unreasonably withheld. If Owner rejects a suggested change, removal or replacement, Program Manager may submit an alternative or retain the previously agreed-upon Key Personnel; provided, however Program Manager shall not dismiss, transfer, or otherwise terminate agreed-upon Key Personnel until Owner, in writing, approves the replacement, accepts the substitute or waives its rights with regard to this article. Owner shall not unreasonably withhold its approval to any such selection, removal, or replacement. Notwithstanding the foregoing, if Program Manager terminates a Key Person pursuant to Program Manager's written corporate policy, Program Manager shall be able to terminate such Key Person without first obtaining Owner's written approval regarding a replacement, but shall replace Key Person in not more than thirty (30) calendar days from the date termination becomes effective with a person reasonably acceptable to Owner as evidenced by Owner in writing. Within five (5) business days of its execution of this Authorization to Proceed, Program Manager shall provide Owner with a copy of its written corporate policy.

- 2.14. Should an agreed-upon Key Person choose to terminate his or her employment with Program Manager, the Program Manager shall replace Key Person in not more than thirty (30) calendar days from the date termination becomes effective with an individual reasonably acceptable to Owner as evidenced by Owner's prior written approval of said substitution. This article shall in no way delete, replace or relax Program Manager's duties and responsibilities regarding its senior staff, Sub-Consultants, and Sub-Contractors, if any, as expressed in this Agreement or the applicable Authorization to Proceed.
- 2.15. It is agreed that all Program Manager Representatives acting as project managers shall be certified by the appropriate governing authority. Proof of certification shall be provided to Owner.

ARTICLE 3 - SUBCONSULTANTS/SUBCONTRACTORS

3.1. Sub-Consultants' Relations

- 3.1.1. Program Manager may be requested to retain, hire, and contract with Subconsultants and/or Subcontractors as deemed appropriate by Owner. All Work provided by a Subconsultant/Subcontractor pursuant to appropriate agreements between the Program Manager and the SubConsultant(s)/Subcontractor(s) shall contain provisions that preserve and protect the rights of the Owner and the Program Manager under this Agreement. All such Agreements shall provide that the Program Manager may assign or transfer to Owner any and all claims or causes of action which the Program Manager has or may have against Subconsultant/Subcontractor as a result of or relating to any acts of omission or commission of that Subconsultant/Subcontractor.
- 3.1.2. Where Program Manager has contracted with a Subconsultant /Subcontractor upon request by Owner, nothing contained in this Agreement shall create any contractual relationship between the Owner and the Subconsultant(s)/Subcontractor(s). However, the Program Manager is at all times liable for any and all negligent acts of omission or commission of

its Subconsultant(s)/Subcontractor(s) relating to or regarding this Agreement or the Project which is the subject of this Agreement. Owner may, at any time, after agreeing to provide Program Manager with a Release or Covenant Not to Sue as to a claim or cause of action, require the Program Manager to assign or transfer to Owner any such claims or causes of action which Program Manager has or may have against one or more of its Subconsultant(s)/Subcontractor(s) regarding or relating to this Professional Service and or Project. Upon such request, the Program Manager shall execute a written assignment or transfer in a form to be provided by the Owner. In the event the Owner requires the Program Manager to assign or transfer said claims or causes of action, then the Owner agrees to indemnify and hold the Program Manager harmless from any claim or cause of action brought by a Subconsultant/Subcontractor against the Program Manager directly related to the claim or cause of action brought by the Owner against a Subconsultant/Subcontractor as a result of such assignment.

- 3.1.3. Each agreement with a Subconsultant/Subcontractor as entered into by Program Manager shall expressly provide:

The Subconsultant/Subcontractor agrees to be bound to Program Manager by all of the terms of the Program Management Agreement between Owner and Program Manager, which Agreement and all accompanying attachments are incorporated herein by reference, and to assume toward Program Manager all of the obligations and responsibilities pertaining to the Subconsultant/Subcontractor's work that Program Manager by the Program Management Agreement assumes toward Owner. Subconsultant/Subcontractor shall have the same rights and remedies against Program Manager that the Program Manager has against Owner. Owner may, at its sole option, take an assignment of the Subconsultant/Subcontractor's or Sub-Subconsultant/Sub-Subcontractor's agreement with Program Manager in the event Program Manager's Work under the Program Management Agreement is terminated prior to the completion of the Project.

3.2. Proposed Subconsultants/Subcontractors:

- 3.2.1. The Program Manager proposes to utilize the Subconsultants /Subcontractors for all Projects pursuant to this Agreement listed in Attachment 5, List of Project Team members.
- 3.2.2. The Program Manager shall not change any Subconsultant/Subcontractor without prior approval by the Owner in accordance with the procedures set forth in articles 2.13-2.14.
- 3.2.3. The Program Manager, not later than ten (10) days after the date of this Agreement, shall submit a list of contact information for Subconsultants/ Subcontractors currently under contract which includes contact names, firm addresses, telephone and fax numbers and internet (or other internet email service provider) email addresses and all the professional credentials

of the Subconsultant/Subcontractor, and of their team members to include State license etc. In the event Program Manager enters into a contract with a Subconsultant/Subcontractor after originally submitting the information described above, Program Manager shall supplement the list within ten (10) days.

ARTICLE 4 - THE OWNER'S RESPONSIBILITIES

- 4.1. **Information, Documents and Work Furnished:** The Owner shall consult with the Program Manager and provide such information regarding requirements for the Project as is reasonable to accomplish the Work requested, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, schedule requirements and any budgetary limitations, which may affect the applicable Scope of Work. Upon request from Program Manager, Owner will provide Program Manager access to all reasonably available information in Owner's possession pertinent to the Work specified in a particular Authorization to Proceed, including existing drawings, as-builts, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction set forth in that Authorization to Proceed.
- 4.2. **Owner Furnished Items:** When documents, services, or other materials furnished by the Owner for the Program Manager's use are deemed by the Program Manager as inappropriate, inaccurate, or otherwise unreasonable, the Program Manager shall notify the Owner (within 48 hours in writing) of its opinion immediately upon discovery of same. Owner will notify Program Manager upon delivery of any inaccurate data provided to the Program Manager (within 72 Hours). Failure of the Program Manager to so notify the Owner shall result in the Program Manager's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, delays or other compensation related to the use of those Owner furnished materials.
- 4.3. **Project Management:**
- 4.3.1. **The Chief Facilities & Construction Officer:** The Chief Facilities & Construction Officer or its equivalent position on the Organizational Chart shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall issue all Authorizations to Proceed to the Program Manager and all invoices for payment to the Program Manager. See Article 5.1.4 below pertaining to Authorization to Proceed. The Chief Facilities & Construction Officer or its equivalent position on the Organizational Chart shall have the authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to Program Manager's Work under the subject Authorization to Proceed. The Chief Facilities & Construction Officer or its equivalent position on the Organizational Chart shall review and make appropriate recommendations on all requests submitted by Program Manager for payment for Work provided and performed in accordance with this Agreement. Further, notwithstanding anything herein to the contrary, the Superintendent or Superintendent's designee so authorized in writing, shall have the authority to approve and execute on behalf of Owner any amendment to Authorization to Proceed

issued pursuant to the terms of this Agreement in accordance with the limits established in writing from time to time by Owner.

- 4.3.2. Owner shall make provision for Program Manager to access and enter the site(s) set forth in the Authorization to Proceed (if any) to perform the Work to be provided by Program Manager with respect to such Authorization to Proceed. Program Manager acknowledges that such access may be provided during times that are not the normal business hours of Program Manager.
- 4.4. Owner shall evaluate the Program Manager's performance annually, and at any other such time that Owner determines, in its sole discretion, evaluation is necessary. Such evaluations may be used in connection with the Owner's considerations for renewal of this Agreement as deemed appropriate by Owner.

ARTICLE 5 – BASIS OF COMPENSATION

5.1. Professional Basic Service Fees:

- 5.1.1. The Owner agrees to pay the Program Manager, and the Program Manager agrees to accept for Services rendered pursuant to this Agreement, based upon a Cost Plus with a Guaranteed Maximum Price based on Direct Personnel Expenses and/or a fee as set forth on Attachments 1, 4, and 5 attached hereto and incorporated by reference.
- 5.1.2. The Basic Service Fee listed above (hereinafter called the "Fee") is based on the Scope of Work for a project of this scope, size and complexity.
- 5.1.3. If the Owner authorizes an increase or decrease in the scope, size or complexity of the Project, the Fee will be adjusted as mutually agreed upon, in writing, by Owner and Program Manager.
- 5.1.4. The Program Manager shall not perform Basic Services, Supplemental Services, or Reimbursable Services until a written Purchase Order with the appropriate "line number" has been issued by the Supply Management and Logistics Department together with a fully executed Authorization to Proceed. **ANY WORK PERFORMED BY THE PROGRAM MANAGER PRIOR TO RECEIPT OF A FULLY EXECUTED WRITTEN AUTHORIZATION TO PROCEED AND PURCHASE ORDER SHALL BE AT THE PROGRAM MANAGER'S OWN RISK.**

**REVISED
12/11/13**

URS Review and
Approves
[Signature]
Initial Above

5.2. Supplemental Fee:

5.2.1. The Program Manager may be authorized to perform Supplemental Services. See Article 5.1.4. The fee for such services will be based upon a Cost Plus with a Guaranteed Maximum Price based on Direct Personnel Expenses. Owner, at Owner's sole discretion, may negotiate and agree with Program Manager on the hourly salary rates for such employee categories or levels as may be appropriate to accomplish the Supplemental Services. Where a mutually agreeable Cost Plus with a Guaranteed Maximum based on Direct Personnel Expense cannot be arrived at, the Owner may secure services from an independent source or from the Owner's resources. The Program Manager shall provide any information and/or copies of project documentation necessary to facilitate the provision of said supplemental services by others.

5.3. Direct Salary Expense:

5.3.1. Where this Agreement or Attachments 1, 4, and 5 hereto indicates a fee computed on the basis of Direct Salary Expense, such fee shall be a not-to-exceed amount based on the following hourly rates:

5.3.2.

Labor Classification	Base Rate	Burden Factors				OH/P	Total
		Taxes	W/C	Insurance	Retirement	%	
Executive Program Manager	\$74.52	11.165%	0.229%	10.401%	2.422%	45.60%	\$134.78
Program Controls/ Clerk Specialist IV	\$44.92	11.165%	0.229%	10.401%	2.422%	45.60%	\$81.24
Senior Project Manager	\$65.08	11.165%	0.229%	10.401%	2.422%	45.60%	\$117.70
Project Manager	\$61.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$110.32
Document Control/ Clerk Specialist III	\$31.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$56.07
Design Manager (Sub- Consultant)	\$52.89	11.165%	0.229%	10.401%	2.422%	45.60%	\$95.66
Estimator (Sub- Consultant)	\$38.47	11.165%	0.229%	10.401%	2.422%	45.60%	\$69.58
Scheduler (Sub- Consultant)	\$38.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$68.73
Project Manager	\$43.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$77.77
Project Manager (Sub- Consultant)	\$50.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$90.43

Note: The hourly rates will be negotiated fixed hourly rates. The Program Manager will submit to the Owner the labor rate per hour and the actual fringe benefit rate per hour for each labor classification. The Program Manager will provide the cost per hour for each component of the fringe benefit rate. The Owner will review the labor and fringe benefit rate and based on the review will negotiate the labor rate set forth above, and, Overhead and Profit. The labor rate will be used in pricing Work subject to this Agreement.

REVISED
12/11/13

URS Review and Approves
Initial Above

5.4. **Direct Personnel Expense:** Direct Personnel Expense is defined as the salary rate, as determined from salaries reported to the Director of Internal Revenue, of the personnel engaged directly on a project, and the portion of the actual cost of their mandatory non-discretionary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, pensions and similar contributions and benefits included on the table in Article 5.3, not to exceed one point two five (1.25) times raw labor, this multiplier does not include overhead and profit.

5.5. **Fees for Reimbursable:**

5.5.1. Reimbursable are those items pre-approved, in writing, and authorized by the Owner in addition to the Supplemental Services and consist of actual expenditures made by the Program Manager and the Program Manager's employees and Subconsultants/Subcontractors in the interest of the Work.

5.5.2. Prior to authorizing Program Manager to incur any Reimbursable under an Authorization to Proceed pursuant to this Agreement, Program Manager shall advise Owner in writing of the estimated charge to Owner for the Reimbursable applicable to the contemplated services to be performed by Program Manager under the proposed Authorization to Proceed. At no cost to Owner, Program Manager shall promptly supply such estimate to Owner based upon Program Manager's good faith analysis.

5.5.3. Reimbursable includes, but is not limited to, authorized travel outside the areas of Dade, Broward and Palm Beach Counties, lodging and meals in connection with the Project (subject to the limitations imposed by Chapter 112.061, Florida Statutes); fees paid for securing approval of authorities having jurisdiction over the Work, reproductions, (outside of Basic services and with prior written Owner approval), postage and handling of Drawings, Specifications and other documents.

5.5.4. The Owner will reimburse the Program Manager for authorized Reimbursable as verified by appropriate bills, invoices or statements.

5.5.5. Authorized Reimbursable shall not include charges for office rent or overhead expenses of any kind, including but not limited to, local telephone, cell phone and utility charges, overtime or any discretionary labor benefits office and drafting supplies, depreciation of equipment, professional dues, subscriptions, etc., reproduction of drawings and specifications, mailing, stenographic, clerical, or other employees time or travel and subsistence not directly related to the Project. For all Reimbursable, the Program Manager must request a pre-approval in writing and authorized from the Owner and / or its representative, the invoice will be accompanied by the proof of the actual expenditures. The submitted cost of the reimbursable expenditures will be re-paid dollar for dollar and no additional markup will be authorized. Authorized reproductions in excess of sets required at each phase of the Work will be a reimbursable upon a written approval by the Owner and / or its representative.

ARTICLE 6 - PAYMENTS TO THE PROGRAM MANAGER

6.1. Payment for Basic and Supplemental Services and/or Reimbursable:

- 6.1.1. Payments for Basic and Supplemental Services and/or Reimbursable may be requested monthly, on the Owner's standard invoice format, in proportion to services performed during each portion of the Work or other basis as set forth in the Schedules attached hereto and conforming to Attachment 1. Owner in its sole discretion shall determine if the payment requested is in accordance with the proportion of the Work performed.
- 6.1.2. No payments shall be due to Program Manager unless and until all materials, forms and documents required by Owner have been provided by Program Manager and its Subconsultant(s)/Subcontractor(s) to Owner or others who are to receive same. Program Manager agrees to furnish to Owner, after the end of each calendar month, or as specified in the Authorization to Proceed, a comprehensive and itemized statement of charges, together with such backup and details that reasonably may be required by Owner (including appropriate releases), for the services performed and rendered by Program Manager during that time period, and for any Owner-authorized Reimbursable as defined herein, incurred and/or paid by Program Manager during that time period. The Owner retains the right to withhold payment from the Program Manager for non-performance of the Program Manager during any Phase or portion of the Project.
- 6.1.3. The Program Manager shall submit invoices on the Owner's required invoice format as attached hereto as Attachment 2 and incorporated herein.
- 6.1.4. All submitted invoices shall have copies of referenced Scope of Work and the Authorization to Proceed attached.
- 6.1.5. Payments are due and payable per Section 218.70, Florida Statutes "Prompt Payment Act" within forty (45) days from receipt of the Program Manager's invoice, provided it is in compliance with the requirements of this Agreement. If the invoice is not in compliance the payment request will be returned in writing for correction and/or full compliance within twenty (20) working days after the invoice is stamped as received.
- 6.1.6. The Program Manager shall submit a monthly M/WBE utilization report with the monthly request for payment, on forms provided by the Owner.
- 6.1.7. Program Manager's acceptance of final payment for Work provided under any Authorization to Proceed shall constitute a full waiver of any and all claims by it against Owner arising out of the Authorization to Proceed or otherwise related to the Work, except those previously made in writing and identified by Program Manager as unsettled at the time Program Manager applies for such final payment. Neither acceptance of Program Manager's Work nor payment by Owner shall be deemed to be a waiver of any of Owner's rights against Program Manager.

6.2. **Project Suspension:**

- 6.2.1. If the Project is suspended for the convenience of the Owner for more than three (3) months or terminated in whole or in part during any Phase, the Program

Manager shall be paid for Work authorized by an Authorization to Proceed which was performed prior to such suspension or termination, together with the cost of Reimbursable Services and expenses then due.

ARTICLE 7 - INDEMNIFICATION CLAUSE

7.1. Indemnification

- 7.1.1. To the extent any provision or article of this agreement is held invalid or unenforceable the Court shall disregard said provision or article and enforce to the fullest extent permitted by law the remaining provisions or articles.
- 7.1.2. To the fullest extent permitted by law, the Program Manager shall indemnify and hold harmless the Owner, its Board members, officers, employees and agents (hereinafter collectively "Related Parties") from and against any and all liability, 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), losses, damage, costs, expenses and fees (including but not limited to reasonable fees of attorneys, expert witnesses and other consultants), which are or may be imposed upon, incurred by or asserted against Owner and/or Related Parties to the extent said liability, claims, causes of action, losses, damages, costs, expenses and/or fees are caused by the negligent, reckless or intentional wrongful acts of omission, error, misconduct, or commission of the Program Manager and other persons or entities employed or utilized by the Program Manager in the performance of the contract.
- 7.1.3. The indemnification rights accruing to the Owner and Related Parties under this Article are independent of, in addition to and not in limitation of or a condition precedent to any rights and remedies accruing to the Owner at law or in equity for damages resulting from Program Manager's breach of any duties arising under this Agreement.
- 7.1.4. The term "negligent acts" as defined herein includes, but is not limited to, the failure of the Program Manager to fully incorporate into the 100% construction documents, all minimum requirements of the Florida Building Code and all other applicable codes, statutes and design criteria in effect on the date Program Manager submits 100% construction documents to Owner for review and approval.
- 7.1.5. In any and all claims against the Owner by any employee of the Program Manager, or anyone for whose acts the Program Manager may be liable, the obligations for Program 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 Program Manager under workman's compensation acts, disability acts, or other employee benefit acts.
- 7.1.6. In the event that any claims are brought or actions filed against the Owner with respect to the indemnity contained herein, the Program 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 Program Manager agrees that the Owner may select the attorneys to appear and defend such claims or actions on behalf of the Owner. The Program Manager further agrees to pay, at the sole expense of the Program Manager, the attorney's fees and

costs 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 acknowledged 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.

7.1.7. The Program Manager recognizes the nature of the indemnification obligations imposed under this contract and voluntarily makes these covenants. The obligation imposed upon the Program Manager under this Indemnification Agreement shall survive termination of this contract.

7.2. Breach of Contract and Remedies

7.2.1. The Program Manager shall comply with all terms and conditions set forth within this Agreement. In the event the Program Manager materially breaches this Agreement, the SBBC shall be entitled to all remedies available at law and/or in equity, including but not limited to, compensatory damages, consequential damages, special damages, delay damages, and attorney's fees and cost.

7.2.2. A Material Breach as defined herein includes, but is not limited to, the Program Manager's failure to timely provide design plans that 1) comply with all governing building codes and regulations; 2) the Program Manager's failure to comply with all "life safety" codes; 3) the Program Manager's failure to comply with all requirements of regulatory agencies having authority over the design and/or construction of the project; 4) the Program Manager's failure to provide design plans that are constructible; 5) the Program Manager's failure to timely respond to Requests for Information; 6) the Program Manager's failure to timely provide contract administration services; and any other material breach of this Agreement.

7.2.3. Program Manager waives any and all claims against Owner for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by the Program Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to Program Manager's termination as authorized herein.

7.3. Disputes

7.3.1. If a dispute arises between Owner and Program Manager regarding this Agreement (including any Authorizations to Proceed issued thereunder) or the breach thereof, Program Manager shall continue to provide and perform the Work and maintain its progress, unless requested by Owner to suspend or delay

the Work or any part thereof. In the event of a dispute, Owner will continue making payment to Program Manager of all undisputed portions of properly submitted and documented payment requests.

- 7.3.2. Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation, prior to litigation. The negotiation shall be attended by representatives of Program Manager with full decision-making authority and by the Owner's staff person who would make the presentation during negotiations. Mediation is required prior to any litigation between the parties arising out of this Agreement before a mediator retained by Owner subject to reasonable agreement of the Program Manager. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation as set forth under Florida law.
- 7.3.3. In the event the parties cannot come to agreement with regard to a dispute, then the parties may seek redress as set forth herein. Matters in dispute under this Agreement shall be resolved by mutual agreement or the parties may seek redress solely through legal proceedings in the Circuit Court of the 17th Judicial Circuit, In and For Broward County, Florida. The parties hereby waive any and all right to trial by jury in an action hereunder commenced by either party in respect to this agreement or any matter arising out of this Agreement or any matter in relation to the Work, labor, services, or materials furnished to the Project. The venue of all actions shall lie solely in Broward County, Florida.

ARTICLE 8 – INSURANCE

8.1. General Insurance Requirements

- 8.1.1. The Program Manager shall not provide any Work under this Agreement until the Program Manager has obtained all insurances required hereunder and such insurances have been approved by the Owner's Designated Risk Management Administrator. Owner may withhold payments due to Program Manager in accordance with this Agreement or terminate or suspend this Agreement with all costs or expenses associated with same to be paid by Program Manager in the event Program Manager fails to comply with any requirement in the Agreement regarding insurance.
- 8.1.2. 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 Agreement shall have an "A"-rating and a financial rating of no less than VI in the current A.M. Best Manual OR hold a Moody's Investors Service Financial Strength of "Aa3" or better. (See additional requirements in section 8.1.5 of this Article).
- 8.1.3. All insurance policies required under this Agreement 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.
- 8.1.4. The Program Manager shall furnish certificates of insurance to the Owner for review and approval at the time of execution of this Agreement and shall maintain same at all times during the term of this Agreement. Such certificate

shall include the Owner's Project number and full Project title (including applicable facility name) on the Certificate.

- 8.1.5. 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 {Program 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.
- 8.1.6. The Program Manager shall verify that all Subconsultants/Subcontractors utilized in conjunction with all Work provided under this contract shall maintain insurance of the type, amount, and classification required by these provisions.
- 8.1.7. Neither approval by the Owner's Designated Risk Management Administrator, nor failure to disapprove the insurance provided by the Program Manager shall relieve the Program Manager of full responsibility to provide the insurance as required by this contract.
- 8.1.8. 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, Program 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's Designated Risk Management Administrator or from the time Program Manager becomes aware of the downgrade or order of liquidation, whichever is sooner.
- 8.1.9. Program Manager and Surety shall have a continuing obligation to ensure that all insurance or surety requirements are satisfied throughout the construction of the project and until all post completion obligations including punch list and insurance warranty requirements are completed or expire.
- 8.1.10. Should at any time Program Manager not maintain the insurance coverages required in this Agreement, Owner may cancel the Agreement and any Authorizations to Proceed issued pursuant to the Agreement or, at Owner's designated Risk Management Administrator's sole discretion, it shall be authorized to purchase such coverages and charge Program Manager for such coverages purchased. If Program Manager fails to reimburse Owner for such costs within thirty (30) days after demand, Owner has the right to offset those costs from any amount due Program Manager under this Agreement. Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Owner or its designated Risk Management Administrator's decision to purchase such insurance coverage shall in no way be construed to be a waiver of its rights under this Agreement.

8.2. Insurance Required:

- 8.2.1 **Professional Liability (Errors and Omissions):** The Program Manager shall procure a Professional Liability Insurance Policy with coverage of not less than One Million (\$1,000,000) Dollars and a deductible of not more than Twenty-Five Thousand (\$25,000) Dollars, providing for all sums which the Program Manager shall be legally obligated to pay as damages for claims arising out of or relating to the Work performed by the Program Manager or any person employed or acting on the Program Manager's behalf, but not limited to Subconsultants/Subcontractors, in connection with this Agreement. The insurance policy, or a policy with the same terms and conditions, shall remain in full force and effect during the project and for a period of time terminating three (3) years after final completion of the project. If the Owner, at its sole discretion, agrees that such coverage is not commercially reasonably available, the Owner may authorize the Program Manager 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.
- 8.2.2 **Workers' Compensation Insurance:** The Program Manager shall maintain Workers' Compensation Insurance in accordance with Florida Statutory Limits and Employers Liability Insurance with a limit of not less than Five Hundred Thousand \$500,000/\$500,000/\$500,000 (each accident/disease-each employee/disease-policy limit).
- 8.2.3 **Commercial General Liability Insurance:** The Program 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; \$2,000,000 general aggregate. Products Completed Operations aggregate shall not be less than \$2,000,000. The School Board of Broward County shall be named as an Additional Insured.
- 8.2.4 **Insurance Warranty Period:** All Insurance policies (CGL; Auto Liability; Workers' Comp), must remain in effect during performance of the Work and for a period of one (1) year after the Certificate of Final Inspection (OEF 209) has been signed by the Chief Building Official /certified inspector. The Professional Liability policy must remain in effect for a period of three (3) years after the Certificate of Final Inspection (OEF 209) has been signed by the Chief Building Official /certified inspector.
- 8.2.5 **Certificate of Insurance Requirements:** Prior to the commencement of any Work, as evidence of required coverage, Program Manager 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 School Board of Broward County's Certificate Tracking System at 1-866-897-0425.

8.2.5.1 Liability Policies are to contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

8.2.5.1.1 The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. The endorsement # is: _____.

8.2.5.1.2 All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.

8.2.5.1.3 Contractual liability is included in the General Liability policy.

8.2.5.1.4 Please include the Project Number and Project Name on the Certificate of Insurance.

8.2.6 **Automobile Liability Insurance:** The Program 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 Program Manager does not own any vehicles, Program Manager shall obtain hired and non-owned coverage for \$1,000,000 Combined Single Limits and provide an affidavit signed by the Program Manager indicating the following:

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

ARTICLE 9 - GENERAL PROVISIONS

9.1. Performance:

9.1.1. **Performance and Delegation:** The Work to be performed hereunder shall be performed by the Program Manager's and Subconsultant/Subcontractor's own staff, unless otherwise approved by the Owner. Said approval shall not be construed as constituting an agreement between the Owners and said other person or firm.

9.1.2. **Term of Agreement:** The term of this Agreement shall start upon the date of this Agreement and no additional Projects may be added to this Agreement more than three (3) years after the date of this Agreement. The Agreement may be extended by one year and not to exceed One Million

Seven Hundred Fifty Thousand Three Hundred Sixty Nine and 00/100 Dollars (\$1,750,369) Two Million and 00/100 Dollars (\$2,000,000.00) per year. The time for performance by the Program Manager for each individual Project pursuant to this Agreement shall be set forth in Attachment 4 hereto which is incorporated by reference.

- 9.1.3. **Time for Performance:** The Program Manager agrees to start all Work hereunder upon receipt of Attachment 4 issued by the Chief Facilities & Construction Officer or its equivalent position on the Organizational Chart, as set forth on Attachment 4 ("ATP") hereto, and to complete all Work in the time set forth by the Owner or its designee in a timely manner. The Program Manager acknowledges that failure to perform within the time stipulated may cause the Owner to sustain loss and damages and the Program Manager will be responsible for same. Owner, at its sole discretion and option may withhold any and all payments due and owing to Program Manager until such time as Program Manager resumes performance of its obligations hereunder in such a manner as to establish to Owner's satisfaction that Program Manager's performance is or will shortly be back on schedule. The Program Manager agrees that Owner is entitled to recover no less than One Hundred Dollars (\$100) per consecutive calendar day of unexcused delay caused by the Program Manager's failure to comply with the times set forth in the fully executed ATP.
- 9.1.4. Upon request and prior to or within fourteen (14) calendar days of receiving a written Authorization to Proceed by Owner to perform Work hereunder for a particular Phase, Program Manager agrees to submit to and establish with Owner a computer-generated bar graph time schedule ("Schedule") for the performance of such Work, same to be based on the Scope of Work and schedules to be provided with respect to the Project or Phase. Said Schedule shall be of a form and content satisfactory to Owner. Work to be rendered by Program Manager shall be commenced, performed and completed in accordance with the Authorization to Proceed and the Schedule. Time is of the essence with respect to the performance of this Agreement and Authorizations to Proceed.
- 9.1.5. **Time Extensions:** Should Program Manager be obstructed or delayed in the prosecution or completion of the Work required hereunder as a result of unforeseeable causes beyond the control of Program Manager, and not due to its own fault or neglect, including but not limited to, acts of God or of public enemy, acts of government or of Owner, fires, floods, epidemics, quarantine, regulations, strikes, or lock-outs, then Program Manager shall notify Owner in writing within three (3) business days (unless Owner expressly agrees in writing to a longer period of time) after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Program Manager may have had to request a time extension.
- 9.1.5.1. The term "business day" shall mean all days of the week excluding Saturdays and Sundays and all legal holidays observed by Owner.

9.1.6. Unless otherwise expressly authorized by Owner or specifically provided for in the Authorization to Proceed, no interruption, interference, inefficiency, suspension or delay in the commencement or progress of Program Manager's Work from any cause whatsoever, including those for which Owner may be responsible in whole or in part, shall relieve Program Manager of its duty to perform or give rise to any right to damages or additional compensation from Owner due to such causes. Program Manager expressly acknowledges and agrees that it shall receive no damages for delay. Extensions of time shall be the Program Manager's sole remedy for any and all delays in the event Program Manager is not the cause, in whole or in part, for the delay. No payment or compensation of any kind shall be made to the Program Manager for damages because of hindrance in the orderly progress of Program Manager's Work or delay from any cause, whether such hindrances are anticipated or unanticipated. Program Manager expressly agrees not to make, and hereby waives any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, including, but not limited to, the aforesaid causes and agrees that Program Manager's sole right and remedy in the case of any delay shall be an extension of time. Without limitation, the Owner's exercise of its rights shall not under any circumstances be construed as compensable delays, it being acknowledged that the compensation set forth in this Agreement includes and anticipates any and all delays whatsoever for any cause, whether such delays are avoidable or unavoidable, reasonable or unreasonable, anticipated or unanticipated. Provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage for Delay" provision. This article shall expressly apply to claims for early completion, as well as claims based on late completion. Notwithstanding the foregoing, the parties acknowledge and agree that the terms of this article shall not preclude Program Manager from being compensated as otherwise provided in this Agreement and the applicable Authorization to Proceed during the pendency of any delay to the extent the delay is not due to the fault or neglect of Program Manager.

9.2. Termination of Agreement:

9.2.1. **Right to Terminate:** The Owner has the right to terminate this Agreement for its own convenience on seven (7) days written notice. In the event of such termination for convenience, Program Manager's recovery against Owner shall be limited to that portion of Program Manager's compensation earned through the date of termination, for any Authorizations to Proceed so cancelled, together with any retainage withheld and any costs reasonably incurred by Program Manager that are directly attributable to the termination, less any claim the Owner may make against the Program Manager to the limit of the insurance deductible, if applicable, or as otherwise necessary to protect Owner from loss due to Program Manager's failure to perform, but Program Manager shall not be entitled to any other or further recovery against Owner, including, but not limited to, anticipated fees or profit on services not required to be performed.

9.2.2. Upon termination, Program Manager shall deliver to Owner, as set forth in section 9.4 herein, all papers, records, documents, Auto Cadd files,

drawings, calculations, models, and other materials in Program Manager's possession or control or arising out of or relating to this Agreement.

- 9.2.3. The Program Manager may terminate this Agreement only for a material breach of the Agreement and provided the Program Manager 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 Program Manager is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance in writing.
- 9.2.4. Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Program Manager to comply with any of its material obligations under this Agreement. In such event, Program Manager 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 Program Manager'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, then it shall be deemed to be a termination for convenience pursuant to Article 9.2.1 above, and the Program Manager's sole compensation shall be compensation in accordance with that article. The definition of "cause" shall also include lack of funding or other economic issues or forces that result in Owner terminating this Agreement.
- 9.2.5. Whether or not this Agreement is so terminated, the Program Manager shall be liable to Owner for any damage or loss resulting from such failure or violation by Program Manager. The rights and remedies of Owner provided by this article are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.
- 9.2.6. **Securing Agreement/Entity Crimes:** Program Manager warrants that Program Manager has not employed or retained any company or person, other than a bona fide employee working solely for Program Manager, to solicit or secure this Agreement and that Program Manager has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Program Manager, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. At the time of the execution of each Authorization to Proceed, Program Manager shall sign and deliver to Owner the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Attachment "8".
- 9.2.7. By its execution of this Agreement, Program Manager acknowledges that it has been informed by Owner of the terms of Section 287.133(2)(a) of the Florida Statutes which reads as follows:

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, proposal, or reply on a contract to provide

any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- 9.2.8. **Force Majeure:** The Owner's or Program Manager's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.
- 9.2.9. **Green Statute: Fla. Stat. § 255.2575 Energy-efficient and sustainable buildings:** All school district buildings shall be constructed to meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system. This section shall apply to all buildings the architectural plans of which are commenced after July 1, 2008.
- 9.2.10. **Equal Employment Opportunity (EEO), Non-Discrimination, and Americans with Disabilities Act Amendments Act of 2008**
- 9.2.10.1. The Equal Employment Opportunity Commission (EEOC) requires employers to report various information about their employees, in particular, their racial/ethnic categories to prevent discrimination based on race/ethnicity.
- 9.2.10.2. In performing all Work to be provided hereunder, Program Manager shall not discriminate against any employee or applicant for employment because of age, color, disability, gender identity, gender expression, national origin, marital status, religion, sex or sexual orientation. Program Manager shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Program Manager shall post in conspicuous places, available to employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity/Nondiscrimination Clause and stating that all qualified candidates will receive consideration for employment

without regard to age, color, disability, gender identity, gender expression, national origin, marital status, religion, sex or sexual orientation. Program Manager shall comply with Owner's MWBE policy and with the MWBE representations made to Owner during the selection process. 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.

9.2.10.3. Individuals with disabilities requesting accommodations under the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) may call Equal Educational Opportunities (EEO) at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

9.3. Program Manager's Accounting Records and Right to Audit Provisions:

9.3.1. Program Manager's records shall include any and all records reasonably requested by Owner that relate to performance of the Work by Program Manager or Subconsultants/Subcontractors. Records include but are not limited to, information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), books, papers, documents subscriptions, recordings, estimates, price quotations, agreements purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, monthly, quarterly, yearly or other financial statements, accounting records, payroll time sheets, job cost reports, job cost history, margin analysis, cancelled payroll checks, W-2's, 1099's, audited and unaudited financial statements to substantiate overhead rates, written policies and procedures, Subconsultant/Subcontractor files (including proposals of successful and unsuccessful Subconsultants/Subcontractors), original estimates, estimating worksheets, computer records, disks and software, videos, photography, correspondence, change order files (including documentation covering negotiated settlements), constructability or peer reviews, coordination documents, logs and supporting documentation, general ledger entries, insurance information, and any other supporting evidence necessary to substantiate charges related to this Agreement (all of the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Program Manager or any of his payees pursuant to the execution of this Agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations), fees, reimbursable services, etc. as they may apply to costs, matters or items associated with this Agreement.

9.3.2. For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the Work, and until five (5) years after the date of final payment by Owner to

Program Manager pursuant to this Agreement. All costs which the Program Manager is unable to provide support or documentation to substantiate that it was incurred as represented by the original estimated breakdown of costs or found to be not in compliance with the provisions of this contract, shall be reimbursed to the Owner.

- 9.3.3. Owner's agent or its authorized representative shall have access to the Program Manager's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article. Owner's agent or its authorized representative shall give auditees reasonable advance notice of intended audits.
- 9.3.4. Program Manager shall require all Subconsultants/Subcontractors 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 Program Manager pursuant to this Agreement.
- 9.3.5. If an audit inspection or examination in accordance with this Article discloses overcharges (of any nature) by the Program Manager to the Owner in excess of \$25,000, the actual cost of the Owner's audit shall be paid by the Program Manager. If the audit discloses contract billing or charges to which Program Manager is not contractually entitled, Program Manager shall pay over to Owner said sum within 20 days of receipt of a written demand unless otherwise agreed to by both parties in writing.

9.4. Ownership of documents:

- 9.4.1. The documents developed under this Agreement shall become and be the sole property of the Owner whether the Project for which they were developed is executed or not. The Program Manager may maintain copies thereof for its records and for its future professional endeavors, although the Owner shall bear no liability or any responsibility whatsoever for such use of said documents by the Program Manager.
- 9.4.2. In the event of the Program Manager's termination under other provisions of this Agreement, the Owner shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.
- 9.4.3. In the event Owner requests any such documents or materials referred to in this Article and Program Manager fails to provide same as requested by Owner, then Program Manager acknowledges that Owner will be irreparably harmed and subject to an injunction to provide same.
- 9.4.4. The Owner will not modify or distribute the documents, including electronic media versions, to third parties except for those purposes listed above without the expressed permission and consent of the Program Manager. The Owner will delete any title blocks or other marks identifying the

originating Program Manager from any materials so distributed. The Owner will indemnify the Program Manager against any claims that result from the modification of data and disks by the Owner.

9.5. Electronic Media:

9.5.1. Where this Agreement or referenced provisions in the Contract require the Program Manager to provide information or documents in either electronic or magnetic media, the preparation and format of that media shall conform to the Owner's "Electronic Media Submittal Requirements" which are incorporated as Attachment 3 to this Agreement for Open End Services.

9.6. Attachments and References:

9.6.1. The following named Attachments are made an integral part of this Agreement and are incorporated by reference:

1. **Attachment 1: SCOPE OF WORK:** A LIST OF SERVICES THAT MAY BE SELECTED FROM THE SCOPE OF WORK.
2. **Attachment 2: PROGRAM MANAGER'S INVOICE FORMAT:** THE OWNER'S STANDARD FORMS THAT WILL BE UTILIZED BY THE PROGRAM MANAGER FOR INVOICING FOR BASIC AND SUPPLEMENTAL SERVICES. THESE FORMS INCLUDE:
 - A. **PROGRAM MANAGER'S INVOICE**
 - B. **PROGRAM MANAGER'S REIMBURSABLE INVOICE**
3. **Attachment 3: ELECTRONIC MEDIA SUBMITTAL REQUIREMENTS:** THE OWNER'S STANDARD REQUIREMENTS FOR THE USE AND SUBMITTAL OF COMPUTER MEDIA.
4. **Attachment 4: AUTHORIZATION TO PROCEED (ATP) FORM:** STANDARD FORMS WHICH WILL BE USED BY THE OWNER WHEN ISSUING AN ATP FOR PROJECT SPECIFIC INCREMENTS OF WORK TO THE PROGRAM MANAGER. THESE SAMPLE DOCUMENTS INCLUDE:
 - A. **PROFESSIONAL SERVICES REQUIRED PAGE 1 OF 3**
 - B. **PROJECT SCHEDULE PAGE 2 OF 3**
 - C. **PROFESSIONAL FEES PAGE 3 OF 3**
5. **Attachment 5: LIST OF PROJECT TEAM MEMBERS**
6. **Attachment 6: DOCUMENT 00455 - BACKGROUND SCREENING**
7. **Attachment 7: IRS FORM W-9**
8. **Attachment 8: TRUTH IN NEGOTIATIONS CERTIFICATE**

9.7. Extent of Agreement:

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

- 9.7.2. This Agreement may not be amended, changed, modified, or otherwise altered after the execution hereof, except by resolution of Owner and a written agreement executed by Owner and Program Manager.
- 9.7.3. 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.
- 9.8. **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 provision or rights in that or any other instance.
- 9.9. **Successors and Assigns:**
- 9.9.1. The performance of this Agreement shall not be delegated or assigned by the Program Manager without the written consent of the Owner.
- 9.9.2. The Program Manager 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.
- 9.10. **Certification and Disclosure:**
- 9.10.1. The Program Manager certifies that by entering this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a Federal department or agency.
- 9.10.2. Where the Program Manager is unable to certify any of the statements in this certification, the Owner, at its sole option, may terminate this Agreement for cause.
- 9.11. **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.
- 9.12. **Authority:** Each person signing this Agreement on behalf of either party individually 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.
- 9.13. **Notice Provision:** When any of the parties desire to give notice to the other, such notice must be Written Notice served pursuant to the procedures set forth

in article 1.1.21, above. For the present, the parties designate the following as the respective places for giving notice.

To School Board: Robert W. Runcie, Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, FL 33301

With copies to: Shelley Meloni, Task Assigned Chief Facilities &
Construction Officer
The School Board of Broward County, Florida
Lauderdale Manors, 1400 NW 14th Court, Ft. Lauderdale,
FL 33311

Director of Supply Management & Logistics
The School Board of Broward County, Florida
7720 W. Oakland Park Blvd., Suite 323
Sunrise, FL 33351

Program Manager: Davin Ruohomaki
URS Corporation Southern
315 E. Robinson Street, Suite 245
Orlando, FL 32801

9.16. **Excess Funds:** Any party receiving funds paid by Owner under this Agreement agrees to promptly notify Owner of any funds erroneously received from Owner upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to Owner with interest calculated from the date of the 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 Owner.

9.17 **Background Screening**

9.17.1 Program Manager agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that Program Manager, its agents, Subconsultants/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 SBBC in advance of Program Manager or its personnel providing any Work under the conditions described in the previous sentence. Program 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 Program Manager and its personnel. The Parties agree that the failure of Program Manager to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement.

9.17.2 Program Manager will be responsible for verifying that all of the Program Manager's employees, Subconsultants, and Subcontractors, if any, including employees of Subconsultants and Subcontractors, who provide or may provide Work under this Agreement have completed all background screening requirements through an Owner designee pursuant to the above-referenced statutes. Program Manager agrees to provide Owner with a list of all employees, Subconsultants, and/or Subcontractors who have completed background screenings as required by the above-referenced statutes and that meet the statutory requirements contained therein. Program Manager agrees that it has an ongoing duty to maintain and update these lists as new employees, Subconsultants, and/or Subcontractors are hired and in the event that any previously-screened employee fails to meet statutory standards. Program Manager further agrees to notify Owner immediately upon becoming aware that one of its employees or Subconsultant's or Subcontractor's employees, who was previously certified as completing the background check, and meeting the statutory standards, is subsequently arrested or convicted of any disqualifying offense. Failure by Program Manager to notify Owner of such arrest or conviction within forty-eight (48) hours of being put on notice by the employee/Subconsultant/Subcontractor and within 5 days of its occurrence shall constitute grounds for immediate termination of this Agreement by Owner.

9.17.3 Program Manager agrees to require all affected employees, Subconsultants, and Subcontractors to sign a statement, as a condition of employment with Program Manager in relation to performance under this Agreement, that the employee or Subconsultant/Subcontractor shall notify Program Manager of any arrest or conviction of any offense enumerated in section 435.04, Florida Statutes within forty-eight (48) hours of their occurrence. Such a statement shall further provide that the person has read, understands, and agrees to abide by the Code of Ethics as well as the Florida State laws, Owner policies, School Code and regulations cited in the Florida Building Code and conflicts of interest policies.

9.17.4 Program Manager agrees to indemnify and hold harmless Owner, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Program Manager's failure to comply with the requirement of this Section or Section 1012.32 and Section 1012.465, Florida Statutes in addition to any other indemnification obligations that may be imposed upon Program Manager pursuant to Article 7 of this Agreement and the laws of Florida.

9.18. **Hazardous Materials**

9.18.1. Unless otherwise expressly provided for in a specific Authorization to Proceed, nothing in this Agreement shall be construed or interpreted as requiring Program Manager to be or assume the status of an owner, operator, generator, transporter, storer, or any other potentially responsible party as defined by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state, or local statute, regulation, order or administrative finding for enforcement of such act or statute, governing the treatment, storage, transportation, reporting

and disposal of hazardous materials. Further, unless otherwise expressly provided for in a specific Authorization to Proceed, Program Manager shall have no duty to discover, handle, remove, store, transport, abate, or remediate any hazardous materials as may be required in connection with a particular Phase; provided, however, in the event any hazardous material is discovered by Program Manager, Program Manager immediately shall notify Owner in writing of such discovery. No Work shall commence if the discovery of hazardous material is prior to performance, and Work shall immediately be stopped if Work is in progress.

- 9.18.2. As used in this article, the term "hazardous material" shall mean and include any element, constituent, chemical, substance, compound, or mixture which is defined in or included under or regulated by any federal, state or local statute, regulation, order or administrative finding for enforcement of such statute, regulation or order pertaining to environmental regulation, contamination, cleanup or disposal, including, without limitation, the Comprehensive Environmental Response and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Marine Protection Research and Sanctuaries Act, the Occupational Safety and Health Act and the Superfund Amendments and Reauthorization Act of 1986.

9.19. Conflict of Interest and Non-Solicitation

- 9.19.1. Program Manager represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Work required hereunder. Program Manager further represents that no persons having any such interest shall be employed, or sub-contracted, to perform the Work. Program Manager shall not conduct or solicit any non-District business while on Owner's property or time. Program Manager agrees to require each of its employees and each of its Subconsultants and Subcontractors' employees to execute a corresponding Conflict of Interest Affidavit, prior to commencing the Work. Program Manager understands that in the event Owner discovers that a conflict exists, the Owner shall have the right to terminate this Agreement immediately.
- 9.19.2. Throughout the course of the Project, Program Manager shall provide certain Work which will require it to work closely with Owner's employee's and engage in certain similar tasks and functions. Program Manager acknowledges that Owner has legitimate business interests to justify the restrictive covenants in this article (hereinafter referred to as the "Covenant not to Solicit Employees") and that each of the restraints contained in the Covenant not to Solicit Employees are reasonably necessary to protect the Owner's legitimate business interests. The protective Covenant not to Solicit Employees is specifically designed to prevent the Program Manager or Program Manager's Subconsultants and Subcontractors (collectively referred to as the "Covenanting Parties") from soliciting or hiring any and all employees of the Owner as set forth herein. The parties further agree that this Covenant Not to Solicit Employees is neither overbroad, nor overlong, nor otherwise inappropriate. The parties acknowledge receiving an opportunity to review this Covenant Not to Solicit Employees with counsel, that this Covenant Not to

Solicit Employees was the result of negotiation between the parties, and that the parties desire to be bound by this Covenant Not to Solicit Employees in order to extend their working relationship and in consideration of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

- 9.19.3. The parties agree that the Covenanting Parties shall not solicit or attempt to persuade any current employee of the Owner to terminate his or her employment with the Owner and accept employment with the Covenanting Party. The parties acknowledge that the Covenant Not to Solicit Employees is appropriate in view of the specialized training Owner provides to its employees and the fact that the Covenant Not to Solicit Employees is limited to solicitation of current employees to terminate their employment with Owner in order to work for the Covenanting Party.
- 9.19.4. The Owner's waiver of a breach of any provision of this Covenant Not to Solicit Employees shall not operate or be construed as a waiver of any subsequent breach by the other party.
- 9.19.5. The terms of this Article shall survive termination of this Agreement.
- 9.19.6. Any Subconsultant or Subcontract agreement executed by Program Manager shall include a similar covenant as contained in this Article making Owner an express third-party beneficiary to said covenant.

9.20. Consultants Competitive Negotiation Act

9.20.1. If the total fee paid to the Program Manager exceeds \$195,000.00, the following provisions of the Consultants Competitive Negotiation Act, section 287.055(5)(a), Florida Statutes shall Apply:

9.20.1.1. The Program Manager shall execute and furnish to Owner a Truth-In-Negotiation certificate, Attachment "8", stating that wage rates and other factual unit costs supporting compensation are accurate, complete, and current at the time of the Authorization to Proceed.

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

9.21. **Mutual Waiver of Chapter 558, Florida Statutes:** As set forth in section 558.005, Florida Statutes, Owner and Program Manager hereby waive the requirements of Chapter 558, Florida Statutes.

9.22. **Gift Ethics:** Program Manager shall require all of its employees, Subconsultants, Subcontractors, vendors, suppliers, and others for whom it is legally liable (collectively referred to herein as "Program Manager Employees") to comply with the provisions of Sections 112.312, 112.313, 112.3148, and 112.3185 (2010) of the Florida Statutes, and Program Manager Employees shall be required to comply with those provisions of the Code of Ethics for Public Officers and

Employees, as well as, Owner's Code of Ethics policies to the same extent as Owner or Owner's Employees.

ARTICLE 10 – INCORPORATION OF RFQ INTO AGREEMENT

10.1. In addition to those Attachments and References identified made part of this Agreement in Article 9.6.1, the provisions of RFQ No. 2014-31-FC (“Program Management Services”) (the “RFQ”) are hereby incorporated into this Agreement. In the event of conflict between the provisions contained in this Agreement and the RFQ, the more stringent provision shall prevail. If this Agreement is silent on an issue that is contained with the RFQ, the provisions of the RFQ shall be followed.

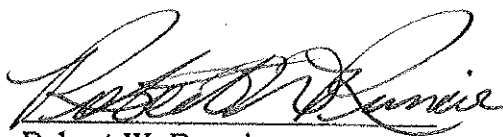
IN WITNESS WHEREOF, The School Board of Broward County, Florida, has caused this Agreement to be executed by the undersigned and the seal of the School Board to be set hereto; and the said Program Manager has caused this Agreement to be executed by the undersigned and the seal of the Program Manager set hereto on this day and year first above written.

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

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



Patricia Good, Chair



Robert W. Runcie
Superintendent of Schools

Approved as to Form and Legal Content:



Office of the General Counsel

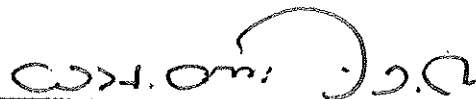
URS CORPORATION SOUTHERN

(ATTEST)

URS CORPORATION SOUTHERN



Davin Ruohomaki, Vice President



William McDaniel, Vice President

ACKNOWLEDGEMENT

**STATE OF FLORIDA
COUNTY OF BROWARD**

BEFORE ME this 25th day of November, 2013, appeared Darin Ruchonak;

and, William M^a Daniel 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 25th day

of November, 2013.

Notary Public State of Florida

My Commission Expires:

Harriet H. Storms

