

CONSTRUCTION MANAGEMENT
AMENDMENT TO AGREEMENT

THIS AMENDMENT TO THE AGREEMENT, **Amendment Number 2**, made and entered into this **28th day of July, 2009** by and between THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA, hereinafter referred to as the "Board", and **Biltmore Construction Company, Inc.** hereinafter referred to as the "Construction Management Firm" or "CM."

WITNESSETH:

WHEREAS, on October 14, 2008 the Board and the Construction Management Firm entered into an Agreement in the amount of \$227,619 which provided for the Construction Management Firm to **Provide for the Construction of a Four Classroom Building at James B. Sanderlin Elementary School, Project No. 671680**, hereinafter referred to as the "Project;" and

WHEREAS, on October 28, 2008 the Board also approved Amendment to the Agreement, in the amount of \$1,582,920 for preconstruction services, construction services, construction related activity associated with new construction and the direct purchase of long lead equipment items, and

WHEREAS, pursuant to paragraph 7.1 of the Agreement the CM is to provide a Guaranteed Maximum Price (GMP) for the project, and

WHEREAS, the CM has established a GMP for the project in the amount of \$1,579,857, and

WHEREAS, the Superintendent recommends acceptance of the GMP and the amount for direct purchases.

NOW, THEREFORE, the Board and the CM agree as follows:

- A. The above recitals are true and correct and are incorporated herein as part of this agreement.
- B. The CM shall provide construction services required to complete the following project **Provide for the Construction of a Four Classroom Building at James B. Sanderlin Elementary School, Project No. 671680**,

in accordance with the Guaranteed Maximum Price submitted by the CM dated June 17, 2009 on the site set forth in the plans and specifications prepared by:

C.B. Goldsmith and Associates, Inc.

13101 56 Ct. N. Suite 801

Clearwater, FL 33760

C. For such construction services the Board shall pay the CM, excluding permitting, the GMP sum of \$1,579,857 payable in accordance with

Article 8, Contractors Compensation, as identified below:

ARTICLE 8
CONSTRUCTION MANAGER'S COMPENSATION

8.1 In consideration of the performance of the contract the Owner agrees to pay the Construction Manager as compensation for its services the fees set forth below in Subparagraphs 8.1.1, 8.1.2 and 8.1.3.

8.1.1 Compensation for Pre-Construction Services - For the performance of the services set forth under paragraphs 2.4.3(l), 2.4.4(a)(b)(c)(d), 2.2(1), 2.2(2) and 2.2(3) and for profit and overhead related to these services, a total of **\$21,066** shall be due upon satisfactory completion of the work associated with the following phases according to the following breakdown:

| | |
|---|------------------|
| (a) Schematic Design Phase I | \$ 7,022 |
| (b) Preliminary Design Phase II | \$ 7,022 |
| (c) Construction Documents Phase III / Establishment of GMP | \$ 7,022 |
| TOTAL: | \$ 21,066 |

The Construction Manager's personnel to be assigned during this phase, their duties and responsibilities to this project, and the duration of their assignments are shown on Exhibit A. However, the Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager.

8.1.2 Compensation for Construction Services - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase by issuing the Building Permit. The Construction Manager's compensation for work or services performed during the Construction Phase shall be a total of **\$111,578**. This is based on an anticipated construction duration of (7) months. The total Construction Phase Compensation **\$111,578** shall be paid at a percentage equal to the percentage of work completed and billed on a monthly basis. The first monthly payment shall become due thirty days following the submission by the Construction Manager of a GMP or Partial GMP as provided for in Article 6 above. If construction is authorized only for a part of the project or if the Construction Manager is performing work under a Partial GMP, the compensation shall be proportionate to the amount of work authorized by the Owner or included within the Partial GMP.

(1) Costs and Expenses Included - The following are included in the Construction Manager's compensation for services during the Construction Phase:

(a) Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices.

The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit A.

(b) General operating expenses related to this project of the Construction Manager's principal and branch offices.

(c) The costs of all data processing staff.

(d) Salaries or other compensation of the Construction Manager's employees at the job site. The Construction Manager's personnel to be assigned to the site during the Construction Phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit A.

(e) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.

(f) Those services set forth in Article 2.4(8).

(g) Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included).

(h) Relocation expenses for Construction Manager's personnel.

(i) The cost of administering the Direct tax saving purchase program. This cost shall include all expenses necessary for the Construction Manager to safeguard, store, and insure all Owner Direct tax saving purchases.

(2) Adjustments in Compensation - For changes in the project as provided in Article 10, the construction phase compensation shall be adjusted as follows:

(a) The Construction Manager shall be paid additional compensation subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused by the negligent acts of the Construction Manager or anyone for whom the Construction Manager is responsible under this Agreement..

(b) If, at the time of the establishment of the GMP, or Partial GMP as applicable, as described in Article 6, the duration of construction differs from the above (measured by reference to the Owner Occupancy date referenced in Article 7 above), the construction phase compensation may be re-negotiated and revised.

(c) Construction Manager's Exclusive Remedy (No Fault by Construction Manager): To the extent that the construction Substantial or Final Completion date is extended due to an act or neglect of the Owner or the Architect-Engineer, and without the fault of the Construction Manager, or where such extension is solely attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and payment of additional Compensation for Construction Services and additional Overhead necessitated by such delay. It is expressly understood by the parties that this provision is intended only to compensate the Construction Manager for expenses actually incurred as direct costs of construction exclusively related to the scope of work suffering delay and is not intended to provide additional profit or compensation to the Construction Manager except as may be agreed to by the Owner.

(d) Construction Manager's Exclusive Remedy (Contributory Fault of Construction Manager and Owner and/or Architect-Engineer): To the extent that the construction Substantial or Final Completion date is extended due to any act or neglect or confluence of acts or events for

which both the Owner (and/or Architect-Engineer) and the Construction Manager are at fault, regardless of the proportion of fault attributable to either, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and such additional Compensation for Construction Services subject to negotiation with the Owner, except that any such additional compensation SHALL NOT include any provision for profit to the Construction Manager.

8.1.3 Overhead and Profit for Construction Phase - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the fixed amount of compensation shall be \$94,975 and shall be paid proportionally to the ratio of the cost of the work in place, including stored materials and less retainage (see Article 12.1), as it bears on the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less. The balance shall be paid when construction of the project is finally completed and occupancy of the project accepted by the Owner. If construction is authorized only for a part of the project, or if the Construction Manager is performing work under a Partial GMP, the amount of compensation shall be proportionate to the amount of work authorized by the Owner or included within in the Partial GMP.

Except as specifically modified herein, all terms and conditions of the original Agreement dated October 14, 2008 shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written.

THE SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA

By: _____
Peggy L. O'Shea, Chairperson

Attest: _____
Julie M. Janssen, Ed.D.
Superintendent

Biltmore Construction Company, Inc.
1055 Ponce De Leon Blvd.
Belleair, FL 33756

By: _____

Title: _____

_____ print or type name

Approved as to Form:

David Koperski
Office of General Council

David Koperski
print or type name