

# **Pinellas County Schools**

## ***AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER***

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PROJECT NO.: **9025**

PROJECT NAME AND LOCATION: **Renovations to selected Heating, Ventilation and Air Conditioning (HVAC), Electrical Distribution, Lighting, and Roofing systems**

**pTEC Clearwater Campus**

**6100 154<sup>th</sup> Ave. N.**

**Clearwater, FL 33760**

CONSTRUCTION MANAGER: **Cutler Associates**

**8918 Brittany Way**

**Tampa, FL 33619**

**813-637-8883**

ARCHITECT-ENGINEER: **Griffin Design Associates, P. A.**

**906 Drew St.**

**Clearwater, FL 33755**

**727-441-8944**

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**AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made this **29th** day of **January** in the year 2013, by and between **The School Board of Pinellas County, Florida**, hereinafter called the "Owner", and

**Cutler Associates  
8918 Brittany Way  
Tampa, FL 33619  
PHONE: 813-637-8883**

**FEDERAL TAX I.D. NUMBER: 04-2521134**

hereinafter called the "Construction Manager."

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

**Renovations to selected HVAC, Electrical Distribution, Lighting, and Roofing Systems  
pTEC Clearwater Campus  
6100 154<sup>th</sup> Ave N.  
Clearwater, FL 33760**

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

**Griffin Design Associates, P.A.  
906 Drew St.  
Clearwater, FL 33755**

hereinafter called the "Architect-Engineer", in consultation with the Construction Manager.

**WHEREAS**, the Construction Manager desires to perform the Project in accordance with the Contract Documents and all applicable laws, codes and ordinances.

**NOW THEREFORE**, in exchange for the mutual covenants and promises set forth herein and the sums of money agreed to be paid by the Owner to the Construction Manager, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between the Construction Manager and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the Construction Manager's best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Construction Manager shall perform the Project in a good and workmanlike manner with sufficient manpower to meet the time and quality requirements set forth in this Agreement and the Contract Documents. The Construction Manager agrees to furnish efficient business administration and superintendence and use the Construction Manager's best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

The Owner's engagement of the Construction Manager is based upon the Construction Manager's representations to the Owner that it (i) is financially solvent and has sufficient working capital to perform its obligations under this Agreement; (ii) is experienced in providing construction management services for projects of similar size and complexity to the Project; (iii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iv) is qualified, willing and able to perform construction management services for the Project; and (v) has the expertise and ability to provide construction management services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

- 1.1 The Construction Team The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion, including all warranty periods, and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the design phase with support from the Construction

Manager and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

- 1.2 Extent of Agreement - This Agreement for **Renovations to selected HVAC, Electrical Distribution, and Roofing Systems, pTEC Clearwater 6100 154<sup>th</sup> Avenue North, Clearwater, FL 33760** between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements with respect to the Project. When the drawings, specifications and other Construction Documents are sufficiently complete to allow the Construction Manager to begin Construction Phase Services, an amendment to this Agreement shall be signed by the Owner and Construction Manager acknowledging a Partial Guaranteed Maximum Price (Partial GMP) and the Construction Documents on which such Partial GMP is based. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are complete, an Amendment to the Agreement shall be signed by the Owner and the Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the Owner, the Construction Manager shall obtain three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer. The Construction Manager shall acknowledge, by signature, on the face of each document of each set that it is the set upon which the Construction Manager based its GMP and shall send one set of the documents to the Owner's Contracts Administrator along with its GMP proposal, while keeping one set for itself and returning one set to the Architect-Engineer.

This Agreement together with the Contract Documents and Construction Documents enumerated herein, including any GMP or Partial GMP Addendum, embodies the entire agreement between Owner and Construction Manager and supersedes all other writings, oral agreements or representations.

This Agreement shall prevail in the event of any disagreement with and shall not be superseded by any provisions of the Contract Documents or Construction Documents and may be amended only by written instrument signed by both Owner and Construction Manager.

1.3 Definitions:

Construction Documents – The drawings, specifications, and other descriptive documents necessary to perform the Construction Phase Services hereunder; such documents are to be identified in the Partial GMP Amendment or GMP Amendment required above by section 1.2.

Contract Documents – Shall be defined as and consist of the following:

- Agreement Between Owner and Construction Manager
- Design drawings and specifications
- Documents specifically identified at the time of execution of this Agreement.

Estimate - The Construction Manager's latest estimate of probable project construction cost.

Owner - The School Board of Pinellas County, Florida, acting through its Superintendent or those persons designated by the Superintendent to act in the Superintendent's behalf.

Project Coordinator - The person designated by the Owner to provide direct interface with the Construction Manager and the Architect-Engineer with respect to the Owner's responsibilities.

Project Inspector - The inspector assigned to the project by the Owner.

Code - The Florida Building Code, and all other codes designated as applicable by the Florida Building Code. To the extent there is any conflict between codes, the most stringent shall always apply. Notwithstanding any other provision 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 Owner in writing to the Florida Building Commission as set forth in Florida Statute s. 1013.37 (2007) and the Florida Building Code, as amended.

Permits - According to the requirements of the Pinellas County School District Facilities Design and Construction department requirements or as defined and required in the Florida Building Code.

Authority Having Jurisdiction (AHJ) – The Owner shall be the Authority Having Jurisdiction over code compliance and issuance of building permits.

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design, permitting, construction and code inspection for

**Renovations to selected HVAC, Electrical Distribution, Lighting, and Roofing Systems,  
pTEC Clearwater Campus  
6100 154<sup>th</sup> Ave N  
Clearwater, FL 33760**

necessary to build the component parts of the project.

## **ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES**

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The Construction Manager shall comply with all federal, state and local governmental laws, rules and regulations applicable to the services to be performed under this Agreement as well as the requirements of the Florida Building Code (FBC) and Florida Fire Prevention Code, in effect as of the date the building permit(s) is issued. The Construction Manager acknowledges that the Owner shall be the Authority Having Jurisdiction to decide and determine all questions under the Florida Building Code and the requirements of this Agreement regarding construction of the project herein described.

Upon execution of this Agreement, the construction Manager shall commence performance of Pre-Construction Services and upon execution of a Partial GMP Amendment (see Article 1.2), the Construction Manager shall commence provision of Construction Services. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services may overlap performance of Construction Services, (iii) categories of work performed during Construction Services may be performed in separate phases, and (iv) payment of the Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

### **2.1 PROJECT MANUAL**

- (1) Within 30 days after the execution of this Agreement, the Construction Manager shall develop a comprehensive Project Manual describing the services set forth in this Agreement. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of Key personnel, responsibilities of Construction Manager, Owner and Architect-Engineer; work flow diagrams; and strategy for subcontracting the work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Three copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
- (2) Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
  - (a) Project Definition - The known characteristics of the project or subprojects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
  - (b) Project Goals - The schedule, budget, physical, technical and other objectives for the project shall be defined.

- (c) Project Strategy - A narrative description of the project delivery methods which will be utilized to accomplish the project goals.
- (d) Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the project.
- (e) Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect-Engineer, and the Owner showing organizational elements participating in the project.
- (f) Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect-Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within its own organization who are assigned to the project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
- (g) Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.
- (h) Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.

## 2.2

### PRE-CONSTRUCTION SERVICES - DESIGN REVIEW AND RECOMMENDATIONS

- (1) Review and Recommendations and Warranty. - The Construction Manager shall familiarize itself thoroughly with the project requirements, educational specifications, construction site, preliminary budget and the evolving architectural, structural, civil, mechanical, plumbing and electrical plans and specifications and shall follow the development of design from Schematics through Working Drawings. The Construction Manager shall make recommendations with respect to the selection of systems and materials and cost reducing alternatives, including value engineering and including assistance to the Architect-Engineer and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the project. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required. It shall submit to the Owner and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. Without assuming any design or engineering responsibilities, the Construction Manager shall call to the Owner's and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents, including, without limitation, any issues regarding constructability and/or compliance with applicable laws, rules, codes, design standards, and ordinances. The Construction Manager shall prepare an estimate of the construction cost utilizing the unit quantity survey method. The Construction Manager shall provide such information in a written report to the Owner prior to final payment for this phase.
- (2) Where the project involves the renovation of existing facilities, the Construction Manager shall participate in and assist the Architect-Engineer in preparing an analysis of the condition of existing structures, existing finishes and existing equipment, code deficiencies, energy use, and life expectancy of other building systems. The Construction Manager shall provide recommendations, including as to constructability and value engineering, cost estimates and preliminary schedules in connection with this renovation analysis. Such information shall be provided to the Owner and Architect-Engineer in the form of a written report prior to final payment for this phase.
- (3) Review Reports and Warranty - Within 45 days after receiving the Construction Documents for each phase of the project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in



Paragraph (6) below. Promptly after completion of the review, it shall submit to the Owner, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as it may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments it may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.2(6). The information required by this part shall be provided prior to final payment for this phase.

UPON COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE PLANS AND SPECIFICATIONS, AND IN NO EVENT LATER THAN 60 DAYS AFTER RECEIVING THE CONSTRUCTION DOCUMENTS, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, THE CONSTRUCTION MANAGER SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

DISCLAIMER OF WARRANTY: - THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE.

- (4) Procurement - The Construction Manager shall review the design for the purpose of identifying procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the subcontract documents and made a part of all affected subcontracts. As soon as the Architect-Engineer has completed drawings and technical specifications and as soon as reasonably practicable, the Construction Manager shall prepare requests for subcontractor proposals. The Construction Manager shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and immediately advise the Owner and the Architect-Engineer of any problems or prospective delay in delivery. The information required by this part shall be provided prior to final payment for this phase.
- (5) Separate Contracts Planning - The Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner and to the Architect-Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. It shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
- (6) Interfacing
  - (a) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
  - (b) Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.2(3), comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Owner and Architect-Engineer may arrange for necessary corrections.
- (7) Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to

enable the Construction Manager, the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the project. The method of acquiring such job-site facilities which are planned to become the property of the owner at the conclusion of the project shall be evaluated based on cost over the life of the project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present its evaluation with recommendation to the owner for approval.

When the Construction Manager wishes to lease Job-Site Facilities from its own equipment pool, it shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then it may lease such Job-Site Facilities from its own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all Job-Site facilities purchased, which may become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain ownership responsibilities of such facilities until the project conclusion. At that time, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner.

The Construction Manager is responsible for proper care and maintenance of all equipment while in its control. At the time of transfer to the owner, the owner may refuse acceptance of the equipment if the owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager or that such acquisition would not otherwise be in the best interest of the Owner. In such event, the Construction Manager will be reimbursed for such item in accordance with Article 9.2(4) hereof.

- (8) Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The Construction Manager shall submit to the Construction Team its recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.
- (9) Market Analysis and Stimulation of Interest
  - (a) The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the project; it shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential subcontractors/suppliers, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
  - (b) Within the time frame set forth in section 2.2(3) above, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Subcontractors/Suppliers Report" setting out recommendations and providing information as to prospective subcontractors/suppliers. As various subcontract packages are prepared, the Construction Manager shall submit to the Owner and the Architect-Engineer a list of potential subcontractors/suppliers. The Construction Manager shall be responsible to stimulate interest in the local market place and identify and encourage competition.
  - (c) The Construction Manager shall carry out an active program of stimulating interest of qualified subcontractors/suppliers in the work and of familiarizing those subcontractors/suppliers with the requirements of this project.

- (d) The information required by this part shall be provided to the Owner in the form of a written report prior to final payment for this phase.

(10) Requests for Proposals/Quotations

- (a) Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare requests for proposals or quotations when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts. Such requests shall be prepared in accordance with the following guidelines:
1. Contracts over \$1,000 but not exceeding \$10,000 may be entered into by the Construction Manager with the firm which submits the lowest verbal quotation. The Construction Manager shall obtain a minimum of three (3) verbal quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner, Architect-Engineer. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of work to be provided.
  2. Contracts exceeding \$10,000 but not exceeding \$200,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction Manager shall obtain from at least three (3) firms written proposals based on written drawings and/or specifications. The written proposals shall be received at the location, date and time named by the Construction Manager in its request for proposal. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm.
  3. Contracts exceeding \$200,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction Manager shall obtain from at least three (3) firms written proposals based on approved plans and specifications. The proposals shall be received at the location, date and time named by the Construction Manager in its request for proposal. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm.
  4. Individual purchases of materials or rentals or leases of equipment amounting to less than \$1,000.00 each may be made without quotes when reasonably necessary to expedite work on the project, however, the Construction Manager shall not divide or separate a procurement in order to avoid the requirements set forth above.
  5. Site utilities may be acquired at market rates from the entity(ies) providing such in the franchise area.
- (b) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Architect-Engineer in written form.
- (c) For each separate construction contract exceeding \$25,000, the Construction Manager shall, unless waived by Owner, conduct a pre-request conference with prospective firms, the Architect-Engineer and the Owner. In the event questions are raised which require an interpretation of the drawings or specifications or otherwise indicate a need for clarification or correction of the request, the Construction Manager shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the affected document, and issue same to all of the prospective firms.
- (d) For all contracts exceeding \$25,000, the Construction Manager shall establish a pre-qualification procedure for applicable subcontract trades.
- (e) For all subcontracts exceeding \$10,000, the Construction Manager shall publicly advertise the request for proposal or quotation, and further, shall require that all subcontractors submit sealed subcontractor bids to be opened in the presence of the Owner or its designated agent.

CONSTRUCTION SERVICES

Prior to initiating any construction services, the Construction Manager shall represent and warrant to the Owner that the Construction Manager has visited the jobsite and examined its nature and location, including without limitation: the surface conditions of the site and any structure or obstruction both natural and man-made; the surface water conditions and water ways of the site and surrounding area; the subsurface conditions of the land as disclosed by soil test borings as provided by the Owner, and the location of electric and utility lines and water, sanitary, sewer and storm drain lines as provided by the Owner. The Construction Manager acknowledges receipt and has reviewed the site geotechnical report provided by the Owner.

- (1) Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and it shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "A" to this agreement. The Construction Manager shall not change any of those persons named in Exhibit "A" unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.
- (2) Lines of Authority - The Construction Manager shall establish and maintain lines of authority for this personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors, the subcontractors, the Architect-Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and its Subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the Subcontractor.
- (3) Schedule and Project Manual Provisions - The Construction Manager shall provide to the Owner, its representatives and the Architect-Engineer copies of the Project Manual (total number of copies not to exceed 5) developed and updated as required by Article 2.1 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. The Construction Manager shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of its subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond its control. The Construction Manager shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.
- (4) Bonds – Whenever the contract award amount exceeds \$100,000, the Construction Manager shall provide to the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond, meeting the requirements of Section 255.05, F.S., on forms approved by the Owner, each in an amount not less than the total construction cost as defined in Article 9 and inclusive of the Construction Manager's fees. All bonds shall identify the School Board of Pinellas County, Florida as owner and shall identify the specific project for which the bond is submitted. All bonds shall be signed or countersigned by a Florida licensed resident agent per Section 624.425, Florida Statutes. The agent signing the bond must hold a current Power of Attorney from the surety company issuing the bond. A copy of such Power of Attorney must be attached to the bond and shall contain no restrictions preventing payment and should specify the city and state where the agent is located.

The form of the aforementioned Performance Bond shall be in accordance with AIA Document

A312, 1984 Edition, except that paragraphs 9 and 11 of the Performance Bond form shall be stricken from the form.

General guidelines applicable to all bonds:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the bond is issued.
5. If the contract award amount exceeds \$500,000, the Surety Company shall also comply with the following:
  - A. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

<u>CONTRACT AMOUNT</u>	<u>POLICY HOLDER'S RATING</u>	<u>REQUIRED FINANCIAL RATING</u>
\$ 500,000 TO 1,000,000	A	CLASS I
1,000,000 TO 2,000,000	A	CLASS II
2,000,000 TO 5,000,000	A	CLASS III
5,000,000 TO 10,000,000	A	CLASS IV
10,000,000 TO 25,000,000	A	CLASS V
25,000,000 TO 50,000,000	A	CLASS VI
50,000,000 TO 100,000,000	A	CLASS VII

- B. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
      - (a) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance, to do business in this state have been met.
      - (b) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.
- (5) Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. The Construction Manager shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.
- (6) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. It shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and

Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. Performance by the Construction Manager of work described in a proposed change order or construction change directive prior to the Construction Manager's receipt of a change order or construction change directive signed by the Owner, shall constitute the Construction Manager's agreement to the scope of work, the adjustment to the GMP and/or Construction Manager's Fee, if any, and the adjustment to the contract time, if any, contained in the proposed change order or construction change directive. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. It shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling of all communication matters. The Construction Manager shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the subcontractors and shall maintain a suspense control system to promote timely response to all such requests for interpretation. The Construction Manager shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above and the impact of any communication failures on the progress of the performance of the work.

- (7) Permits and Licenses - The Construction Manager shall secure all necessary permits and all necessary utility connection permits, the cost of which will be considered a direct cost item. The Construction Manager shall verify that subcontractors are at all times properly licensed to perform the work or supply the materials pursuant to Chapter 489, F.S., and shall provide evidence thereof to the Owner in accordance with subsection 10.3.

(8) Job Site Requirements

The Construction Manager shall provide for each of the following activities as a part of its Construction Phase Compensation:

1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
4. Provide labor relations management for a harmonious, productive project.
5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
6. Provide a quality control program as developed under Article 2.3(5) hereinabove.
7. Miscellaneous office supplies that support the construction efforts which are consumed by its own forces.
8. Travel to and from its home office to the project site as the project requires.

- (9) Job Site Administration - The Construction Manager shall provide as part of its Construction Phase Compensation, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

- (a) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including

direct tax saving purchases and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, Owner and Construction Manager either weekly, biweekly or monthly, whichever is designated by the Owner.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

- (b) Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- (c) Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
- (d) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
- (e) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
- (f) Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner and the Architect-Engineer.
- (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- (h) Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with its own forces, the Architect-Engineer will prepare the presubstantial punch list from which the Construction Manager will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on its presubstantial punch list has been accomplished.
- (i) Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books.
- (j) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade Construction Managers.
- (k) Record Drawings - During the progress of the work, the Construction Manager shall require the site, plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. The Construction Manager shall also record all drawing revisions that have

been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The exact routing of piping, conduit runs shall be shown on these drawings.

Upon completion of the work, this data shall be recorded to scale utilizing a computer aided design and drafting application (CADD). Two (2) sets of disk files will be furnished to the Construction Manager by the Architect-Engineer, but the cost shall be borne by the Construction Manager. Each drawing shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

The Construction Manager shall review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the project. The disks shall be submitted to the Architect-Engineer when completed, together with two sets of blue line or black line prints for certification and forwarding to the Owner at the time of final completion.

- (I) Project Closeout - In addition to the foregoing, on or before final completion of the project, the Construction Manager shall provide the following to the Owner:
- (1) "As-built" Drawings by Construction Manager as follows:
    - Two sets signed by Construction Manager as approved by the Architect-Engineer on paper (Preferred drawing size to be "D" 24" x 36" or "E" for larger buildings).
    - One Auto Cad CD
    - One PDF - CD
  - (2) Two hard copy sets of construction process submittals (including manufacturer's equipment specifications) and equipment service manuals organized by specifications divisions. Construction Manager shall provide two – four (4) drawer file cabinets (no lateral files) with locks, one for the school/facility and one for DOC Center.
  - (3) A "Warranty, Training and Equipment Transfer Book" including the following items:
    - A Master List of each warranty
    - Original copy of signed warranties as listed on Master List
    - Copy of Construction Manager, General Contractors, and Subcontractors warranties with their phone # and address
    - List of training to be per specifications
    - List of portable equipment being transferred to school/Maintenance Department and its cost
  - (4) Original certifications of the following:
    - A. Original Engineer approval of HVAC test and balance report; and CD copy of test and balance report - by test and balance company
    - B. HVAC controls test with point to point validation
    - C. Elevator inspection report from state
    - D. Fire alarm tests report
    - E. Boiler inspection report from state
    - F. Paint manufacture, paint color codes, and drawdown cards
    - G. All glass wind protection shelter certification
    - H. Division 17, copies of initial testing, preliminary system performance testing, preliminary equalization of completed systems and final proof of performance testing of completed system
    - I. Water treatment test report
    - J. Absence of Friable Materials Certification
    - K. Copy of Certificate of Completion or Certificate of Occupancy
  - (5) Five aerial photos of new completed facilities to be provided in Digital CD format (5 mega pixel minimum with a direct overhead photo and four compass point photos at 45 degrees) plus all construction related photos.



(6) Copy of Final Punch List and Certificate of Final Completion.

- (10) Administrative Records - The Construction Manager will maintain at the job site, unless agreed to otherwise by the Owner, on a current basis, files and records such as, but not limited to the following:

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs-
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records:
  - Sales Tax Recovery Status Report
  - Labor Costs
  - Material Costs
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual

The project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

- (11) Owner Occupancy - The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Construction Managers, "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager shall conduct a preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training, in equipment use, for building operators.

The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their

meaningful implementation.

The Construction Manager shall continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.

- (12) Warranty - Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection six (6) months after the date of Substantial Completion, and a further warranty inspection twelve (12) months after the date of Substantial Completion. At the conclusion of each warranty inspection, the Construction Manager shall provide the Owner a written report detailing any observation of defects of any kind and a proposed remediation plan.

## 2.4 REPORTING REQUIREMENTS - PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

### 2.4.1 General:

- (1) Commencing immediately after execution of this Agreement, the Construction Manager shall implement and shall utilize throughout the life of this Agreement all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- (2) The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly and shall accompany each pay request as a prerequisite of payment.
- (3) If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop in Pinellas County for participants designated by the Owner and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- (4) The PMIS shall be described in terms of the following major subsystems:
  - (a) Narrative Reporting, on a monthly basis,
  - (b) Schedule Control, on a monthly basis,
  - (c) Cost Control, and estimating,
  - (d) Project Accounting,
  - (e) Accounting and Payment, and
  - (f) Action Reports.

### 2.4.2 Narrative Reporting Subsystem

- (1) The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8 1/2" X 11" format.
- (2) The Narrative Reporting Subsystem shall include the following reports:
  - (a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, any problems or delays, including

code violations, and proposed solutions to alleviate any existing problems or delays.

- (b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - (c) A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
  - (d) A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
  - (e) A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
  - (f) On a monthly basis, and included with the monthly report, the Construction Manager shall provide aerial photographs of construction site. The photographs shall consist of three (3) 8" x 10" prints of three different views with a project specific title block identifying the project.
  - (g) A Daily Construction Diary during the construction phase describing events and conditions on the site as well as manpower totals and hours worked per person on an individual basis.
- (3) The reports outlined in subsection (2)(a) through (f) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others designated by the Owner with the monthly pay requisition.
- Additional copies of the report outlined in subsection (2)(a) shall be bound separately and distributed monthly as directed by the Owner.
- (4) The Daily Construction Diary outlined in subsection (2)(g) above shall be maintained at the site available to the Owner and Architect-Engineer. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the project.

#### 2.4.3 Scheduled Control Subsystem

- (1) Master Project Schedule – Within 30 days of the execution of this Agreement, the Construction Manager shall prepare and submit a Master Project Schedule covering the planning and design approvals, construction, Owner occupancy, and substantial completion of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The Master Project Schedule shall be produced and updated monthly throughout the project.
- (2) Within thirty (30) days after the date of the Owner's issuance of the Building Permit, the Construction Manager shall prepare and submit to the Architect-Engineer a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Architect-Engineer shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate this Agreement or to withhold any payment.

Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time

required to finally complete the subject project and at the time any partial or final Guaranteed Maximum Price is established (as provided for herein), or at such earlier intervals as circumstances may require, update and revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. All updated and revised schedules shall reflect any and all delays carried over from prior submitted construction schedules, unless such delay has been abated prior to the submission of an updated and revised construction schedule. Each such update and revision to the construction schedule shall be submitted to the Architect-Engineer in duplicate. Failure of the Construction Manager to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate this Agreement or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Architect-Engineer is submitted.

- (3) The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
  - (a) Pre-Subcontract Schedules (Subnetworks) - The Construction Manager shall prepare a construction schedule for work encompassed in each subcontract package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the package as a framework for contract completion by the subcontractor. It shall show the interrelationships between the work of the subcontractor and that of other subcontractors, and shall establish milestones keyed to the Master Project Schedule.
  - (b) Subcontractor Construction Schedules (Subnetworks) - Upon the execution of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-subcontract schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
  - (c) Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

2.4.4 Cost Control Subsystem - The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem include as a minimum the following submissions at the following phases of the project:

#### Estimates

- (a) At completion of Schematic Design Phase I, for Each Item or scope of work.
- (b) At Completion of Preliminary Design Phase II, for Each Item or scope of work.
- (c) At Completion of 66% Construction Documents Phase III, for Each Item or scope of work.
- (d) At establishment of any partial and final Guaranteed Maximum Price.
- (e) Construction Documents Estimates - Prior to the establishment of a partial and/or final Guaranteed Maximum Price, when the working drawings and specifications are complete, the Construction Manager shall prepare and submit a cost estimate on the basis of a quantitative material take-off

with current local cost for each scope of work.

- (f) The information required by this part shall be provided in writing prior to final payment for each phase.

2.4.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports :

- (a) Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- (b) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retainage (both current and cumulative), the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- (c) A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
- (d) A Cash Flow Diagram showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- (e) A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.
- (f) A Direct Tax Savings Purchase Plan shall be developed and submitted to the Owner for approval. Upon acceptance, this plan will be part of the Construction Manager's services.

2.4.6 Accounting and Payment Subsystem – The Construction Manager shall provide the Owner with reports of its internal accounting and payment systems on forms provided by the Construction Manager subject to the Owner's approval.

2.4.7 Action Reports – The Construction Manager shall provide the Owner with reports of the Construction Manager's internal activities on forms provided by the Construction Manager subject to the Owner's approval.

### **ARTICLE 3 SUBCONTRACTS**

3.1 Definition - A Subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at the site. Nothing contained in the Contract Documents shall create any contractual relation between the Owner or Architect-Engineer and any subcontractor.

3.2 Procedures - The Construction Manager shall develop procedures which are acceptable to the Owner for the prequalification of Subcontractors. Subject to Article 9 and, in accordance with Article 2.2(10), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified firm after it has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work.

3.3 Required Subcontractors' Qualifications and Subcontract Conditions

- 3.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by these Documents, assumes toward the Owner and the Architect-Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with its Sub-subcontractor.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 3.3 and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Sub-subcontractors.

3.3.2 Subcontract Requirements

- (1) On all subcontracts where the bid exceeds \$50,000, the Construction Manager may require Subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Construction Manager wishes to award subcontracts to subcontractors unable to supply this bonding, it may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.

- (2) All Subcontracts shall provide:

**LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**

That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event such change in the work is completed by a subcontractor or a sub-subcontractor, the contractor actually performing the work shall be limited to a maximum mark up of 10% on its actual cost of material, labor, and equipment costs. Additionally, if the work is performed by a sub-subcontractor, the subcontractor will be limited to a mark up of 5% on the actual cost passed through from the sub-subcontractor. The total cumulative mark up on all changes in the work shall not exceed 15%.

Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

Each subcontract shall require that any claims by subcontractor for extension of contract time due to delay or for adjustments due to changes in the scope of work must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

- 3.4 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.

- 3.5 Subcontracts to be Provided - If requested by the Owner, the Construction Manager shall include a copy of each subcontract, including the general and supplementary conditions, in the Project Manual.

**ARTICLE 4  
OWNER'S RESPONSIBILITIES**

- 4.1 Owner's Information - The Owner shall provide full information regarding its requirements for the project.
- 4.2 Owner's Representative - The Owner shall designate a representative who shall be fully acquainted with the project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. It shall render decisions promptly and furnish information expeditiously.
- 4.3 Architect and Engineer's Agreement - The Owner shall retain an Architect-Engineer for design and to prepare construction documents for the project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.
- 4.4 Site Survey and Reports - The Owner shall provide for the furnishing for the site of the project all surveys describing the physical characteristics including asbestos surveys, as required, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.
- 4.5 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 4.6 Legal Services - The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 4.5 and such auditing services as it may require.
- 4.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 4.8 Drawings and Specifications - The Owner will make available to the Construction Manager a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.
- 4.9 Project Fault Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, it shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.
- 4.10 Funding - The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.
- 4.11 Lines of Communication - The Owner and Architect-Engineer shall communicate with the Subcontractor Managers or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.
- 4.12 Lines of Authority - The Owner shall establish and maintain lines of authority for its personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 4.13 Permitting & Code Inspections - The Owner recognizes and coordinates with the appropriate Permitting Authority and expects the Construction Manager to do the same.

## **ARTICLE 5 INSPECTION**

Construction will be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors working for the Owner.

- 5.1 Code Inspections - All projects require detailed code compliance inspections during construction in disciplines determined by the Owner and the Architect-Engineer. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.

Inspection personnel will be provided by the Owner and the Architect-Engineer. Names, addresses, and

phone numbers of the inspectors will be provided to the Construction Manager. The Construction Manager shall communicate and cooperate with outside agencies for inspections as required.

The Construction Manager shall notify the appropriate inspector(s), no less than 24 hours in advance, that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection. All costs for uncovering and reconstruction shall be borne by the Construction Manager.

All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality.

Cost for all re-inspections of work found defective and subsequently repaired shall be borne by the Construction Manager.

## **ARTICLE 6 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION**

- 6.1 Guaranteed Maximum Price (GMP) Proposal - When the Design Documents, as generally defined by a design document listing to be provided by the Architect-Engineer and Construction Manager upon execution of this Agreement for use as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price, are sufficiently complete to establish the scope of work for the Project or any portion thereof, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing for the Owner's approval, a Guaranteed Maximum Price ("GMP") or Partial GMP, guaranteeing the maximum price to the Owner, for the construction cost of the Project as a whole (GMP) or designated part thereof (Partial GMP). Such GMP, or Partial GMP, as applicable, will be subject to modification for changes in the Project as provided in Article 10. However, the actual price paid for the work by the Owner shall be the lesser of (1) the GMP (or Partial GMP where appropriate); or (2) the sum of the following: the actual cost of all subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9 necessary for the completion of the Project or applicable part thereof in the case of a Partial GMP, and the Construction Manager's compensation under Article 8.

OWNER SHALL NOT BE LIABLE FOR NOR SHALL IT PAY CONSTRUCTION MANAGER ANY SUMS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE. CONSTRUCTION MANAGER SHALL PAY ALL SUMS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE WITHOUT REIMBURSEMENT FROM THE OWNER. CONSTRUCTION MANAGER AGREES THAT ANY AND ALL SAVINGS BELONG AND/OR REVERT BACK TO THE OWNER.

- 6.2 Taxes - The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.

- 6.3 Cost of Work and Contingency - At the time of submission of a Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If subcontracts or supply contracts are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If subcontracts or supply contracts are received above the applicable line item in the GMP the deficiency may be taken from the contingency, however such events shall not be cause to increase the GMP.

If subcontracts or supply contracts are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work as acknowledged by the Owner or negotiate for its performance for the specified line item lump sum amount or less.

- 6.4 Reduction of Contingency - When 100% of the contracts with subcontractors and suppliers have been



executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed. In other words, if 10% of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order. At such time that the contingency equals 10% of its original sum, no further deductions will occur until the project is 100% complete and accepted.

## ARTICLE 7

### SCHEDULE, TIME OF COMMENCEMENT, SUBSTANTIAL COMPLETION AND PENALTIES

7.1 At the earlier of the time a Guaranteed Maximum Price (GMP) or a Partial GMP is established, as provided for in Article 7, a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the Master Project Schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and Owner Occupancy date.

7.2 The Owner and Construction Manager acknowledge that failure to complete the project within the construction time set forth in the approved schedule will result in substantial damages to the Owner including, without limitation, delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner. Penalties for failure to comply with the terms of this Agreement, as provided for by Florida Statutes s. 1013.47, will be determined and identified by the Owner's designated representative at the time a GMP is established for all of the project, or a Partial GMP is established for a portion of the project, as appropriate.

7.2.1 Liquidated Damages for Substantial Completion - The Construction Manager shall pay the Owner the sum of: **five hundred dollars (\$500)** per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth in the Contract Documents for Substantial Completion of each phase, if phased, or the Project, if not phased.

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

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

7.2.2 Liquidated Damages for Final Completion - If the Construction Manager fails to achieve final completion within 60 days of the date of Substantial Completion, the Construction Manager shall pay the Owner the sum of five hundred dollars (\$500) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth for final completion of the Project.

Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable estimate of delay damages, inconvenience, additional overhead and costs likely to be sustained by the Owner as estimated at or before the time of executing this Agreement. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.

Prior being entitled to receive final payment, and as a condition precedent thereto, the Construction Manager shall provide the Owner, in the form and manner required by Owner, if any, the following:

1. An affidavit that Construction Manager's obligations to all subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, have been paid or otherwise

satisfied;

2. Such other documents as required by the Project Manual from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Owner including but not limited to final release of lien;
3. All product warranties, operating manuals, instruction manuals and other documents customarily required of the Construction Manager or reasonably required by Owner, including but not limited to those required elsewhere in the Contract Documents, as part of its Project Closeout procedures.

- 7.3 Partial use or occupancy of the Project shall not result in the Project being deemed substantially completed, and such partial use or occupancy shall not be evidence of Substantial Completion.
- 7.4 The date of Owner Occupancy shall occur as described in Articles 2.3(11) and 7.1 hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the date of project Substantial Completion.

## **ARTICLE 8 CONSTRUCTION MANAGER'S COMPENSATION**

- 8.1 In consideration of the performance of this Agreement 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(1), 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 amount that shall be fixed at **(\$30,185)** shall be due upon satisfactory completion of the work associated with the following phases according to the following breakdown:

(a)	Schematic Design Phase I	\$ _____
(b)	Preliminary Design Phase II	\$ _____
(c)	Construction Documents Phase III / Establishment of GMP	<b><u>\$ 30,185</u></b>
<b><u>TOTAL:</u></b>		<b><u>\$ 30,185</u></b>

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 Notice to Proceed.

The Construction Manager's compensation for work or services performed during the Construction Phase shall not exceed **\$407,275**. This is based on an anticipated construction duration of **8** months. The total Construction Phase Compensation 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 managerial and/or supervisory employees at its principal office and branch offices. The Construction Manager's managerial and/or supervisory personnel, included in this provision, who are to be assigned to the Project 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 of the Construction Manager's principal and branch offices related to this Project.
- (c) The costs of all data processing staff.
- (d) Salaries or other compensation of the Construction Manager's managerial and/or supervisory employees at the job site. The Construction Manager's managerial and/or supervisory personnel to be assigned to the site during the Construction Phase to be included in this provision, as well as 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 2.3(8), and (9).
- (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.

For purposes of calculating the costs associated with subparagraph (a) and (d), above, the Construction Manager's Labor Burden, to be included in such cost, shall not exceed the percentage set forth within the Labor Burden Calculation Form attached hereto as Exhibit "B." For purposes hereof, Labor Burden means the actual cost of benefits and taxes that Construction Manager must pay or chooses to pay its employees and shall not include any profit, markup or expense unrelated to employee compensation. With respect to benefits Construction Manager chooses to pay, the categories of such benefits must be approved by Owner. The following types of fringe benefits shall not be included in Labor Burden: incentive compensation, bonuses, personnel support costs, and extraordinary retirement benefits. Fringe benefits shall be reimbursable only as specified in Exhibit "B."

- (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 shall 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 total amount of compensation shall be **(4.5%) of the Cost of the Project as defined in Article 8.1.4** 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.

8.1.4 Limitation on Construction Manager's Compensation – To the extent any provision of this Article 8 requires the calculation of the Construction Managers' compensation with reference to a percentage of the Cost of the Project, including, without limitation, any fees, overhead, profit or other compensation, the Cost of the Project shall be deemed to exclude the following: performance/payment bond, builder's risk insurance, liability insurance, guarantee, owner's contingency and overhead & profit, such amounts to be excluded prior to the calculation of any percentage based compensation,

## ARTICLE 9 COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the Construction Manager which are not included in Article 8. Such costs shall include only those items specifically set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Cost of the Project as defined in this Article 9. Such payment shall be in addition to the Construction Manager's compensation stipulated in Article 8.

9.2 Direct Cost Items

- (1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of its work under this Agreement plus Labor Burden to cover fringe benefits as set forth below.

For purposes of calculating the cost of labor to be reimbursed under the previous paragraph, the Construction Manager's Labor Burden shall not exceed the percentage set forth within the Labor Burden Calculation Form attached hereto as Exhibit "B." For purposes hereof, Labor Burden means the actual cost of benefits and taxes that Construction Manager must pay or chooses to pay its employees and shall not include any profit, markup or expense unrelated to employee compensation. With respect to benefits Construction Manager chooses to pay, the categories of such benefits must be approved by Owner. The following types of fringe benefits shall not be included in the Labor Burden: incentive compensation, bonuses, personnel support costs, and extraordinary retirement benefits. Fringe benefits shall be reimbursable only as specified in Exhibit "B."

- (2) Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.

- (3) Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to contract under this Agreement.
- (4) Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work, cost on such items used but not consumed which may be turned over to the Owner at the end of the project and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager. For those items to be turned over to the Owner at the end of the project, Article 2.2(7) shall apply.
- (5) Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-Construction Manager or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- (6) Cost of the premiums for all insurance and cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the construction project. This includes any sub-contractor bonds the Construction Manager deems appropriate.
- (7) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
- (8) The cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or its subcontractors or suppliers.

No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

- (9) Minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
- (10) Costs for trash and debris control and removal from the site.
- (11) Cost incurred due to an emergency affecting the safety of persons and property.
- (12) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
  - (a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
  - (b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this Agreement.

- (13) All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Manager's fees as set forth in Article 8.
- (14) If requested by the Owner, the Construction Manager will perform all or a portion of any item in Article 9 for the cost of the work.

- (15) If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (16) Transportation greater than 100 miles from the site for those personnel employed directly for the project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and may be in accordance with the Construction Manager's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- (17) Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project.
- (18) Costs for watchman and security services for the project.
- (19) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
- (20) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- (21) Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the work.
- (22) Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.3(9)(k). Upon completion of the work, the Construction Manager shall obtain two (2) sets of disk files from the Architect-Engineer and record to scale all as-built conditions. The disk shall be submitted to the Architect-Engineer when completed, together with two sets of blue line or black line prints for certification and forwarding to the Client Agency, at the time of final completion.
- (23) Costs for scheduling the services of independent testing laboratories and providing the necessary testing of materials to ensure conformance to contract requirements.

## ARTICLE 10 CHANGE IN THE PROJECT

- 10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the current construction schedule, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.
- 10.1.1 A Change Order is a written order to the Construction Manager signed by the Owner, issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fee, or the current construction schedule. Each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to the Cost of the Project.
- 10.1.2 The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
  - (1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
  - (2) by unit prices stated in the Agreement or subsequently agreed upon;
  - (3) by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
  - (4) by the method provided in Subparagraph 10.1.3.
- 10.1.3 If none of the methods set forth in Clause 10.1.2 is agreed upon, the Construction Manager, provided it

receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

10.1.4 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2, provided, however, that no such adjustment shall be made if the Construction Manager has failed to comply with the requirements of Article 2.2(2).

## 10.2 Claims for Additional Cost or Time

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate contractor employed by the Owner or by any changes ordered in the work or by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the owner pending resolution of disputes, and any such delay affects the critical path of the work as reflected on the most recent Master Project Schedule or revision thereto under the PMIS, the Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Team may determine.

Only delays which are determined to extend the critical path for the schedule for constructing the project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

Should events occur during the performance of the project which would justify granting the Construction Manager a time extension under any of the above circumstances causing delay, the Construction Manager shall be entitled to receive only such time extension as is determined by the Project Architect-Engineer to be due the Construction Manager as follows:

.1 In the event the currently published construction schedule indicates completion at or after the contractually established date for Substantial Completion, any time extension shall only be added to the contractually established date for Contract Completion.

.2 The Project Architect-Engineer shall determine its recommendation as to time extensions which shall be determined by application of that portion of delay time directly affecting the critical path of the current accepted construction schedule.

.3 The Construction Manager may not receive a time extension or additional compensation for any delay unless such delay is noted by the Construction Manager on the first construction schedule submitted after the Construction Manager knows or should know of the cause for such delay and the Construction Manager has provided information to the Owner and Project Architect-Engineer as to corrective action to offset such delay.

.4 The Owner will not be obligated to grant time extensions nor the Project Architect-

Engineer obligated to recommend such based on improper scheduling of the project or failure to meet schedules, if not indisputably and totally the fault of the Owner or Project Architect-Engineer.

10.3 Audit Rights

Owner shall have the right to conduct an audit of Construction Manager's books and records and to verify the accuracy of Construction Manager's claims with respect to Construction Manager's costs associated with any Change Order or Construction Change Directive and Construction Manager's compliance with this Agreement and applicable law. The Construction Manager agrees to obtain from subcontractors and provide to Owner and Architect-Engineer upon request all documentation and information as is reasonably necessary to enable Owner and Architect-Engineer to evaluate change order requests, including without limitation the breakdown between subcontractor labor, material and profit. Construction Manager shall provide Owner with documentary evidence that all subcontractors are at all times properly licensed pursuant to Chapter 489, F.S., and other applicable law. This provision shall not be construed to reduce the audit rights provided in Article 12.7.

10.4 Minor Changes In The Project

The Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the Project Architect-Engineer.

10.5 Emergencies

In any emergency affecting the safety of persons or property, the Construction Manager shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.1.2.

10.6 Hazardous Materials

10.6.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.6.2 The Owner shall not be responsible under paragraph 10.6.1 for materials and substances brought to the site by the Construction Manager unless such materials were required by the Contract Documents.

10.7 Safety

The Construction Manager shall be fully and solely (excepting the liabilities and responsibilities of his subcontractors are not hereby eliminated) for all matters of safety of persons and property arising from this Agreement. Neither the Architect-Engineer, nor the Owner or any of their representatives or employees are to be assumed to have any role in matters of safety except they (including the School's Principal or Facility Director) shall have the authority to order suspension of a portion of the Work which they notice may endanger students, faculty, School District employees or the public. In such instances, the Construction Manager shall be entitled to no additional compensation. However, safety shall not be the Principal's or Director's responsibility, but shall be solely the responsibility of the Construction Manager.

**ARTICLE 11  
DISCOUNTS AND PENALTIES**

11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all



returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to fault of the Construction Manager for late payment of Cost of the Project will be paid by the Construction Manager.

## **ARTICLE 12 PAYMENTS TO THE CONSTRUCTION MANAGER**

- 12.1 Monthly Statements - The Construction Manager shall submit to the Owner a statement, sworn to if required, along with the cost reports required under Article 2.4.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's compensation due as provided in Article 8. This data shall be attached to the Partial Pay Request form. Ten percent (10%) retainage shall be held on all payments until the Agreement is fifty percent (50%) complete, except that, when approved by the Owner, certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. 50% completion shall be defined for purposes of this provision as that point in the construction of the project at which time the Architect Engineer has approved for payment to the Construction Manager fifty percent (50%) or more of the Guaranteed Maximum Price of the project as defined herein in Article 6. At 50% completion, the Owner shall approve a reduction of the retainage from 10% to 5% on each subsequent progress payment and, may, upon proper request of the Construction Manager, make payment of up to one-half of the retainage held by the Owner, unless the Owner has appropriate grounds for withholding the payment of retainage, such as the existence of a good faith dispute, claim or demand by the Owner or Construction Manager. Payments by the Owner to the Construction Manager shall be made as described in Article 17.7 hereinafter. The parties acknowledge that the maximum retainage set forth in this provision is subject to current Florida Statutes. In the event of a change in the applicable Florida Statutes affecting the maximum allowable retainage, whether an increase or decrease, such change shall be applied to this Agreement prospectively from the date of such change.
- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's compensation, shall be due and payable as described in Article 17.7 after the Owner has accepted occupancy of the project, provided that the Project is then finally completed, and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 150% of the estimated cost of completing any unfinished work, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. The cost of completing unfinished items shall be established by the Architect/Engineer in its sole discretion. Thereafter, Owner shall pay to Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the Construction Manager shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.
- 12.2.1 Compliance with s. 218.735, Florida Statutes – The Construction Manager, Owner, and Architect-Engineer shall cooperate in the development of a list of items required to render complete, satisfactory, and acceptable the construction services purchased by the Owner according to the following time table:
1. For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching substantial completion of the construction services or upon reaching beneficial occupancy or use, whichever is later;
  2. For construction projects having an estimated cost of \$10 million or more, within 60 calendar days after reaching substantial completion of the construction services or upon reaching beneficial occupancy or use, whichever is later;
  3. In the event the Project calls for construction in phases or involves the construction of more than one building or structure, such a list shall be developed for each phase or building/structure according to the time frames in the preceding paragraphs.
  4. It shall be the responsibility of the Construction Manager to submit, for the Architect-Engineer to review, a preliminary list of the type herein described, including both incomplete and incorrect items, no later than the Construction Manager's request for a Substantial Completion inspection. The Architect shall approve, reject, or make recommended revisions to the list within 15 days of the submission. Upon rejection or revision, the Construction Manager shall have 15 days in which to resubmit the list for the Architect to re-

review. Upon approval of the form of the list by the Architect, the Owner shall have 30 days to approve, reject or amend the list. Upon rejection or revision by the Owner, the Construction Manager shall have 15 days in which to resubmit the list to the Owner for approval. The final form of the list must be completed prior to the deadlines established in subparagraphs 1-3 above.

- 12.3 Payments to Subcontractors - The Construction Manager shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on Construction Manager's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from 10% to 5% thereafter. If there should remain items to be completed, the Construction Manager and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to 150% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items is likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the Construction Manager shall require the subcontractor to submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

- 12.4 Delayed Payments by Owner – Owner shall comply with the Local Government Prompt Payment Act as set forth in Florida Statutes s. 218.70 et seq.

- 12.5 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.

- 12.6 Withholding Payments To Subcontractors - The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. If Prompt payment does not occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping as required.

- 12.7 Audit Rights

Construction Manager's records, which shall include, but not be limited to, accounting records, payroll time sheets, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files, (including documentation covering negotiated settlements), and other supporting evidence necessary to substantiate charges related to this Agreement(all 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 Construction 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 as they may apply to reimbursable costs associated with this Agreement. All records shall be provided by Construction Manager within a reasonable period of time not to exceed 30 days following receipt of Owner's written request.

Construction Manager shall keep all records and supporting documentation which concern or relate to the work hereunder for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Manager shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. Owner and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Construction Manager's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Manager shall cooperate in any audit, inspection, or copying of the documents.

If at any time, Owner conducts such an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged Owner for any compensation or costs incurred in the Project, Construction Manager shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Overcharged Amount is equal to or greater than 3/8 of 1% of the construction value, Construction Manager shall pay to Owner the Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Manager. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed reimbursable to Construction Manager..

Construction Manager shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts, which include such provisions, shall be reason to exclude some or all of the related payees' costs from amounts payable to the Construction Manager pursuant to this Agreement.

This Article, including all access, inspection, copying, auditing, reimbursement and repayment rights, shall survive the termination of this Agreement.

### **ARTICLE 13 INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

#### **13.1     Indemnity**

- (1) The Construction Manager agrees to indemnify and hold harmless the Owner, its officers and employees, and Architect-Engineer from all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Construction Manager and persons employed or utilized by the Construction Manager in the performance of this Agreement.
- (2) The Owner shall cause any other Contractor who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify and hold harmless the Owner, its officers and employees, under the same terms as required of the Construction Manager under the preceding paragraph.

#### **13.2     Insurance**

- (1) The Construction Manager shall not commence any construction work in connection with this Agreement until it has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida and minimum AM Best ratings of A-VII.
- (2) Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all its employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this Agreement at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.
- (3) Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General

Liability and Comprehensive Automobile Liability Insurance as shall protect it from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by the Construction Manager itself or by anyone directly or indirectly employed by the Construction Manager, and the amount of such insurance shall be minimum limits as follows:

- |   |  |
|---|--|
| (a) Construction Manager's Comprehensive General Liability Coverages, Bodily Injury & Property Damage | \$1,000,000 Each Occurrence, Combined Single Limit |
| (b) Employer's Liability  | \$1,000,000 Each Occurrence                        |
| (c) Automobile Liability Coverages, Bodily Injury & Property Damage                                   | \$1,000,000 Each Occurrence, Combined Single Limit |
| (d) Excess Liability, Umbrella Form   | \$5,000,000 Each Occurrence                        |
- Shall be Excess over policies in Sections 13.2 (3) (a), (b) and (c) and 13.2 (5).

#### Combined Single Limit

Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

- (4) Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of its subcontractors to procure and maintain, during the life of any subcontract related to the Project, insurance of the type specified above or insure the activities of its subcontractors in its policy, as specified above.
- (5) Owner's and Construction Manager's Protective Liability Insurance - The Construction Manager shall procure as a cost of the project and furnish an Owner's and Construction Manager's Protective Liability Insurance Policy with the following minimum limits:
 

(a) Bodily Injury Liability & Property Damage Liability	\$1,000,000 Each Occurrence Combined Single Limit
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- (6) "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- (7) Broad Form Property Damage Coverage, Products & Completed Operations Coverages -The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- (8) Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- (9) Insurance Conditions
  - (a) To cover to the fullest extent permitted by law, the Construction Manager's Liability Policy shall insure the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party insured hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- (b) In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the insurance obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (c) The obligations of the Construction Manager under this Article 13.2(9) shall not extend to the liability of Architect-Engineer, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect-Engineer, its agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
- (10) Owner's Builder's Risk Coverage - The Owner shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverage on an "all risk" basis, including theft. This coverage shall remain in force regardless of partial occupancy by the Owner prior to final acceptance of the Project. The "Builders Risk Policy" shall insure the construction and / or renovation, and all materials, supplies equipment and machinery which are charged to the project and which will be incorporated into the construction and / or renovation, except:
- (1) Construction Manager's, Contractor's and Subcontractor's tools, machinery, plant and equipment, cranes, lifts or hoists including spare parts and accessories and property of a similar nature not destined to become a part of the completed Project;
  - (2) Vehicles or equipment licensed for highway use, rolling stock, aircraft or watercraft whether on or off the project site;
  - (3) Materials, equipment, parts and supplies after delivery to the project site or an approved offsite storage facility and destined to become a part of the completed Project purchased through the Owner's Direct tax saving purchase program such that the Owner shall directly enjoy the economic benefit of the proceeds of such insurance as required by Florida Administrative Code Rule 12A-1.094.
  - (4) Scaffolding, form work, fences, shoring, hoarding, falsework, and temporary buildings and all property of a similar nature unless such property is specifically charged to the project, insurable values are declared, and coverage is agreed to be assumed by Owner;
  - (5) All property in transit prior to delivery and acceptance in an undamaged state at the project site;
  - (6) All property in offsite temporary storage unless agreed to be assumed by Owner.
- Unless otherwise agreed, for all of the described property listed in Section 13.2, 10, (1) through (6) above, all risks of loss or damage will be retained by the Construction Manager, Contractors, and Subcontractors for their own account.
- (11) Construction Manager's Property Insurance Coverage - The Construction Manager shall take out and maintain during the life of the Project, an "all risks" property policy and transit policy, including theft, providing coverage for property specified in Section 13.2, 10, (3) through (6). This coverage shall remain in force regardless of partial occupancy by the Owner prior to final acceptance of the Project. These policies will name the Owner as an Additional Insured and Loss Payee as their respective interest in the insured property may appear. Any applicable deductibles under these policies will be the responsibility of the Construction Manager.
- (12) Certificates of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:
- Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the Owner. This Certificate shall be dated and show:

- (1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
  - (2) Owner as Additional Insured under the Construction Manager's policies. Construction Manager as Additional Insured under the Owner's Builders Risk Policy as their respective interest in insured property may appear.
  - (3) All required Waivers of Subrogation.
  - (2) Statement that the Insurer will mail notice to the Owner and a copy to the Architect-Engineer at least sixty (60) days prior to any material changes in provisions or cancellation of the policy.
  - (3) Certificate of Insurance shall be in the form as approved by the Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section commencing at 13.2 and ending with 13.3.4.
- (13) Owner's Insurance to be Excess or Secondary to Construction Manager's Insurance - as to any insurable claim for which both the Owner and Construction Manager have applicable insurance, the Construction Manager's policy shall be considered primary and the Owner's shall be secondary or excess only.

### 13.3 Waiver of Subrogation

- 13.3.1 The Owner and the Construction Manager waive all rights against each other, for any loss or damages covered by insurance provided under Article 13.2 to the extent covered by such insurance, except:

- (1) Such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees;
- (2) On renovations of existing facilities Owner and their property insurers shall not waive subrogation if property damage to an existing adjacent facility or school is caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager or Subcontractors.
- (3) Owner and their liability insurers shall not waive subrogation if bodily injury to any person or persons or property damage to others is caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager or Subcontractors.
- (4) As respects Sections 13.2 (10) Owners Builders Risk Insurance and 13.3.1 (2) & (3) above, Construction Manager and Subcontractors will be responsible to pay Owners deductibles or self insured retentions under Owner's Insurance when loss or damage is caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager or Subcontractors.

The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

- 13.3.2 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed.

## **ARTICLE 14**

### **TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION**

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

#### 14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause.

- (1) If the Construction Manager fails to perform any of its obligations under this Agreement, including any obligation it assumes to perform work with its own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Construction Phase Compensation shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) If the Construction Manager is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 45 days or more behind schedule) which has been adopted by the Construction Team, or if it fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method it may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work). The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of finishing the project and the Construction Manager's Construction Phase Compensation shall be reduced by an amount required to manage the project through completion.
- (3) If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Construction Manager in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days written notice, during which period Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method it may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work). The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of finishing the project and the Construction Manager's Construction Phase Compensation shall be reduced by an amount required to manage the project through completion.

#### 14.3 Termination by Owner Without Cause

Owner may terminate this Agreement at any time in Owner's sole and absolute discretion subject to the following rights of the Construction Manager: If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.2(3), it shall reimburse the Construction Manager for any unpaid Cost of the Project due under Article 9, plus that part of the unpaid balance of the Construction Phase Compensation in an amount as will increase the payment on account of its fee to a sum which bears the same ratio to the Construction Phase Compensation as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the current Estimate of the actual cost of the Project as of the time of termination. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall further assume and become liable for obligations,

commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such obligations or commitments.

- 14.4 Any termination for cause by Construction Manager, which is adjudged by a court of competent jurisdiction, arbitration panel, if applicable, or the like, shall be converted to a termination pursuant to section 14.3, above, and the Construction Manager paid accordingly. Construction Manager's rights in such an event shall be treated as if the termination was for convenience from its inception.

## **ARTICLE 15 ASSIGNMENT AND GOVERNING LAW**

- 15.1 Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other including the assignment of proceeds. Any assignment of proceeds without the written approval of the Owner signed by the Superintendent of Schools shall be a material breach of this agreement and grounds for immediate termination by the Owner.
- 15.2 This Agreement shall be governed by the Laws of the State of Florida.

## **ARTICLE 16 NOTICE OF CLAIM, WAIVER OF REMEDIES, NO DAMAGES FOR DELAY**

- 16.1 The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

- (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
- (b) The Construction Manager must submit a Notice of Claim to Owner and to the Architect-Engineer within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
- (c) Within 20 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as provided in this paragraph. Time is of the essence with respect to the time requirements of this paragraph.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owner's written decision shall be final agency action unless the Construction Manager requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 28-106, F.A.C. within twenty-one (21) days of the Construction Manager's receipt of the Owner's determination.

The venue for all civil and administrative actions against the Owner shall be in Pinellas County.

- 16.3 The Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time, as determined by Article 10.2 of this Agreement, and additional compensation pursuant to Article 8.1.2(2) of this Agreement.



The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claims for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

- 16.4 In the event it shall be determined, by a Court of competent jurisdiction, that the preceding provision are inapplicable or enforceable for any reason or cause, then the Construction Manager shall be entitled to the sum of \$200 per day for each day it is actually delayed by the action of or neglect of the Owner or Architect-Engineer, or by changes in the Project, or by any other cause of delay which is attributable to the Owner and beyond the Construction Manager's control, avoidance or mitigation and without the fault or negligence of the Construction Manager and/or Subcontractor or supplier at any tier. This provision contemplates anticipated and actual loss caused by any delay and the difficulty in proving the loss. The sum set forth above, on a per diem basis, is the total amount recoverable from the Owner as full and final compensation for all delay damages, consequential damages, loss of profits and/or the like, plus additional construction phase fees as determined by Article 8.1.2.

16.5 Mediation

Any claim arising out of or related to this Agreement, except those which are waived pursuant to the terms of this Agreement, shall, after initial determination by the Owner, in consultation with the Architect-Engineer, or 30 days after the submission of the claim to the Owner, be subject to mediation, in the County wherein the project is located, as a condition precedent to the institution of legal or equitable proceedings by either party.

## **ARTICLE 17 MISCELLANEOUS**

- 17.1 Interest - Any monies not paid when due to the Construction Manager under this Agreement shall bear interest only as may be required by Section 215.422(3)(b), Florida Statutes (2004), which section provides for interest only on undisputed amounts for which payment has been authorized. In the event of any dispute relating to payments under this Agreement, except in the limited circumstances set forth above, interest shall be calculated based on the annual increase in the Consumer Price Index (CPI-U) as published by the United States Bureau of Labor Statistics for the calendar year first preceding the date on which the dispute arose.

- 17.2 Harmony - Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its Subcontractors for work on the project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the project.

Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

- 17.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

- 17.4 Current Funding Limitations - The Owner's current funding only allows for an expenditure of the Owner's Construction Budget. Any further services and/or construction requires additional funding and are only to be commenced upon receipt of a specific written authorization from the Owner.

- 17.5 Invoices - Invoices shall be submitted in detail sufficient for a proper preaudit and postaudit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.

- 17.6 Construction Manager's Project Records - The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by Federal Law, and shall be made available to the Owner or its authorized representative at mutually convenient times.

- 17.7 Construction Manager's Payment Rights - Construction Managers providing goods and services to the Owner should be aware of the following time frames. Upon receipt, the Owner has thirty (30) days to inspect and approve the goods and services.
- Pay Requests which have to be returned to a Construction Manager because of Construction Manager's preparation errors will result in a delay in the payment. The Pay Requests payment requirements do not start until a properly completed Pay Request is provided to the Owner.
- 17.8 Public Entity Crime Information Statement - "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- 17.9 Unauthorized Aliens - The School District shall consider the employment by any Construction Manager of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.
- 17.10 Electronic Mail Capabilities - The Construction Manager must have electronic mail capabilities through the World Wide Web. It is the intention of the Owner to use electronic communication for all projects whenever possible. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 17.11 Authority - Each person signing this Agreement on behalf of either party warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 17.12 Prohibition on Contingent Fees - Construction Manager warrants that Construction Manager has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager, to solicit or secure this Agreement and that Construction Manager has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction 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 this Agreement is executed, Construction Manager shall sign and deliver to the Owner the Truth-in-Negotiation Certificate attached hereto and made a part hereof as Exhibit "C." Construction Manager's compensation shall be adjusted to exclude any sums by which Owner determines that compensation was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

The School Board of Pinellas County, Florida

By: \_\_\_\_\_  
Carol J. Cook, Chairperson

Attest: \_\_\_\_\_  
Michael A. Grego, Ed.D., Superintendent

Approved as to form:

David Kaprielian  
School Board Attorney

**Cutler Associates, Inc.**  
8918 Brittany Way  
Tampa, FL 33619

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
**print or type name**

## EXHIBIT A

### CONSTRUCTION MANAGER'S PERSONNEL

#### OFF-SITE STAFF:

Individual:	Title:	Duration in Months	% of Time Available
<u>DURING DESIGN:</u>			
(Off-Site Individual 1)Mark Savigny	(Title)Dir. Of Pre-Con	5	25%
(Off-Site Individual 2)Duke Perry	(Title)Sr. Estimator	5	50%
(Off-Site Individual 3)Randy Fitkin	(Title)Dir. Of Ops	5	10%
(Off-Site Individual 4)Chris Norton	(Title)Sr. Project Mgr	5	25%
(Off-Site Individual 5)	(Title)		
<u>DURING CONSTRUCTION:</u>			
(Off-Site Individual 1)Chris Norton	(Title)Sr. Project Mgr	8	65%
(Off-Site Individual 2)Duke Perry	(Title)Project Engineer	8	30%
(Off-Site Individual 3)Randy Fitkin	(Title)Dir. Of Ops	1	15%
(Off-Site Individual 4)	(Title)		
(Off-Site Individual 5)	(Title)		

#### ON-SITE STAFF:

Individual:	Title:	Duration in Months	% of Time Available
<u>DURING DESIGN:</u>			
(On-Site Individual 1)	(Title)		
(On-Site Individual 2)	(Title)		
(On-Site Individual 3)	(Title)		
(On-Site Individual 4)	(Title)		
(On-Site Individual 5)	(Title)		
<u>DURING CONSTRUCTION:</u>			
(On-Site Individual 1)John Binder	(Title)Superintendent	8	100%
(On-Site Individual 2)Scott Mckeown	(Title)Super (2 <sup>nd</sup> shift)	8	60%
(On-Site Individual 3)	(Title)		
(On-Site Individual 4)	(Title)		
(On-Site Individual 5)	(Title)		

**EXHIBIT B**

**Construction Manager's Labor Burden**

Social Security Tax	6.20
Medicare Tax	1.45
State Unemployment Tax	3.50
Federal Unemployment Tax	.60
Total Fixed Burden	11.75
Workers Compensation	5.21
Health Insurance	15.73
Life Insurance	.78
Disability	2.53
Total (not to exceed)	36%