



Contract # _____

Approval Date: _____

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

CONSTRUCTION MANAGEMENT AGREEMENT

This Construction Management Agreement (hereinafter the "Agreement") is made by and between THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA, located at 817 Bill Beck Boulevard, Kissimmee, FL 34744 (hereinafter "Owner") and _____ (hereinafter "Construction Manager" or "CM"), located at _____.

WHEREAS, the Owner owns that certain parcel of land (hereinafter referred to as the "Site") having a street address of _____; and

WHEREAS, the Owner has retained the services of _____ (hereinafter referred to as the "Architect") to perform design services for the _____ **Project** (hereinafter referred to as the "Project"); and

WHEREAS, Owner hereby retains Construction Manager pursuant to Request For Qualifications #SDOC-_____ to perform the services described herein, and Owner agrees to compensate Construction Manager for such services in accordance with this Agreement; and

WHEREAS, the following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A- Preconstruction Services Amendment
- Exhibit B- Guaranteed Maximum Price (GMP) Amendment
- Exhibit C- Owner Direct Material/Equipment Purchase Program
- Exhibit D- Truth-In-Negotiation Certificate

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1: GENERAL AGREEMENT PROVISIONS

- 1.1 Recitals. The recitals set forth in the Whereas clauses are incorporated by reference and made a part of this Agreement.
- 1.2 Relationship of Parties. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services, and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Construction Manager shall have one (1) representative on staff and one (1) representative from their site contractor to be certified as a Florida Storm-water Inspector. The

Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project. Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any other person or entity other than the Owner and Construction Manager.

- 1.3 Contract Documents. The Contract Documents shall consist of this Agreement, including any attached exhibits, the Conditions of the Contract (including General, Supplemental, and other conditions), the drawings, specifications and any addenda issued prior to execution of the Agreement, Request for Qualifications Solicitation Document and all addenda, and all written proposals and responses from Construction Manager, and any modifications issued after execution of this Agreement, including any amendments to this Agreement and any authorized Change Orders (as defined in paragraph 1.14 below) approved by Owner. Any amendment to this Agreement shall only be effective if it is reduced to writing and duly executed by both parties.
- 1.4 Construction Documents. The Construction Documents include all drawings, plans and specifications developed by the Architect during the performance of the Agreement, and details the requirements for the construction of the Project. The Construction Documents also include all change orders, revisions, addenda and other information developed during the construction phase of the Project.
- 1.5 Labor Burden. Labor Burden is defined as a fixed percentage of the Construction Manager's direct labor costs, is not subject to audit, and shall be set forth in the Preconstruction Services Amendment, Exhibit "A" and the GMP Amendment, Exhibit "B". Labor Burden shall not include any calculations for overhead and profit, shall exclude home office and support personnel not providing labor directly to the Project; and for employees only working on-site part-time, shall include only their pro rata portion of total salary directly connected to Work on the Project. The fixed Labor Burden rate shall not be subject to adjustment unless approved in writing by the Owner's Project Representative.
- 1.6 Buyout Savings. Buyout Savings is defined as the difference between the Cost of the Work, including Construction Manager's Fee and the GMP when the total Cost of the Work, including the Construction Manager's Fee, is less than the GMP after giving effect to adjustments for changes in the Work. The tracking and reporting of Buyout Savings to the Owner's Project Representative is the responsibility of the Construction Manager and is subject to audit by the Owner. The Owner's Project Representative shall provide the Buyout Transfer Authorization Form to the Construction Manager.
- 1.7 Allowances. Allowances refers to the allocation of construction funds to portions of the Work that cannot be specified with sufficient particularity for competitive bidding at the time of contracting. At the time of contracting, any allowances are to be included in the Direct Costs of the GMP. Prior to the use of Allowances, the Construction Manager must submit a request, signed by the Architect, to the Owner's Project Representative for approval. The Construction Manager shall make all reasonable efforts and strive to obtain at least three (3) bids for each Allowance identified in the GMP. All remaining Allowances shall be returned to the Owner as Project Savings and shall include the Construction Manager's Fee applied at the time of GMP. The tracking and reporting of Allowances to the Owner's Project Representative is the responsibility of the Construction Manager and is subject to audit by the Owner.

- 1.8 Request for Qualifications Solicitation Document. The term “Request for Qualifications Solicitation Document” as used herein refers to the Request for Qualifications (“RFQ”) that was advertised by the Purchasing Department and subsequently led to the award of this Agreement.
- 1.9 Work. The term “Work” as used herein refers to all construction and other services required by the Contract Documents, including all labor, supervision, materials, equipment, tools, supplies, incidentals operations and activities and services required by the Contract Documents or reasonably inferable by Construction Manager as necessary to complete the Project and produce the results intended by the Contract Documents in a safe, expeditious, orderly and workmanlike manner, and in the best manner known to each respective trade.
- 1.10 Drawings. The term “Drawings” as used herein means the graphic and pictorial portions of the Contract Documents, which serve to show the design, location and dimensions of the Work to be performed.
- 1.11 Specifications. The term “Specifications” as used herein means that portion of the Contract Documents, which are the written requirements for the materials, equipment, systems, standards and workmanship for completion of the Work and performance of related services.
- 1.12 Provide. The term “Provide” as used herein shall mean to furnish and install materials and equipment, together with all incidentals for a complete and ready to use item and system.
- 1.13 Guaranteed Maximum Price (GMP). The term “Guaranteed Maximum Price” as used herein is the established maximum cost for the Project with the Construction Management Company assuming all obligations and contracts for performing the work.
- 1.14 Change Order (CO). The term “Change Order” as used herein is a written document prepared by the Architect, and executed by the Owner, Construction Manager, and Architect, authorizing and setting out in detail the specific change in the Work, the dollar amount of adjustment to the Contract Sum, if any, and adjustment to the Contract Time, if any.
- 1.15 Construction Change Directive (CCD). The term “Construction Change Directive” as used herein is a written document prepared by the Architect and executed by the Owner’s Project Representative and Chief Facilities Officer on behalf of Owner, which serves to change the Work and may provide for an adjustment to the GMP and/or Contract Time.
- 1.16 Contingency. The term “Contingency” as used herein is defined as an allowance within the GMP, to be approved in writing by the Owner or Owner’s Project Representative, if so designated by the Owner, for unforeseen costs during construction; additional scope previously unknown or undetermined that is requested by Owner or Owner’s Project Representative; and/or for additional scope for the betterment of the Project, as requested by Owner or Owner’s Project Representative (as defined in paragraph 2.3 below). The Owner retains exclusive use of the Contingency, and in no event may cost overruns be taken from the Contingency, unless the overruns fall strictly within the definition of “Contingency” in this paragraph, and all expenditures have been approved in writing by the Owner or the School District’s Superintendent if so designated by the Owner prior to being incurred. The tracking and reporting of Contingency use to the Owner’s Project Representative is the responsibility of the Construction Manager and is subject to audit by the Owner. The Owner’s Project Representative shall provide the Contingency Transfer Authorization Form to the Construction Manager.

- 1.17 Contract Time. The term “Contract Time” shall mean the period of time established in the Contract Documents between Notice to Proceed and Substantial Completion of the Work, and the period of time between Substantial Completion and Final Completion of the Work.
- 1.18 Contract Sum. The term “Contract Sum” shall mean the sum of the Cost of the Work, General Conditions and General Requirements, insurance and bonds, the Construction Manager’s Fee, and the Owner’s Contingency.
- 1.19 Substantial Completion. The term “Substantial Completion” as used herein is the date established in the Contract Documents, and is the date when the Work, or a designated portion thereof, as defined in the Contract Documents or by Owner, is sufficiently complete so that the Owner may occupy or utilize the Project for its intended use, and only minor items which can be corrected or completed without any material interference with the Owner’s use of the Project remain to be corrected or completed.
- 1.20 Final Completion. The term “Final Completion” as used herein is the date established in the Contract Documents, and is the date when the Architect has completed a satisfactory final inspection of the Project.
- 1.21 Project Final Completion. The term “Project Final Completion” as used herein is the date established in the Contract Documents, and is the date when the Architect has completed a thorough review of the Construction Manager’s Final Application for Payment. Upon doing so, the Architect will issue a Certificate of Final Inspection indicating that the Construction Manager has met all contractual obligations.
- 1.22 Certificate of Final Inspection (CFI). The term “Certificate of Final Inspection” as used herein is issued by the Architect when the Architect has completed a satisfactory final inspection of the Project and a thorough review of the Construction Manager’s final Application for Payment.
- 1.23 Architect’s Supplemental Instructions (ASI). The “Architect’s Supplemental Instructions” is to be used by the Architect to specify or provide additional instructions, information and interpretations related to a set of plans and/or specifications developed by the Architect, consistent with the intent of the Contract Documents. The Architect shall respond to a Request for Information from the Construction Manager by issuing an ASI.
- 1.24 Request For Information (RFI). A “Request For Information” is to be initiated by the Construction Manager to request, in writing, information from the Architect related to the Contract Documents, to request an interpretation of the intent of the Contract Documents, or to point out perceived omissions, gaps, conflicts or ambiguities in the Contract Documents.
- 1.25 Proposal Request (PR). A “Proposal Request” is to be used by the Architect to request a proposal from the Construction Manager for work to be considered for approval by the Owner or Owner’s Project Representative.
- 1.26 As-built Documents. As-built Documents are developed by the Construction Manager during the Project and are then provided to the Architect at the completion of the Project. The As-built Documents include all markups, notes, and revisions to the original construction documents and shall accurately reflect the work as constructed.

- 1.27 Record Documents. Record Documents are prepared by the Architect and reflect on-site changes the Construction Manager noted in the As-built Documents.
- 1.28 Original Work Product. The Original Work Product shall include, but not be limited to, all computer-generated electronic documents (CADD files and specifications), As-built Documents received from the Construction Manager at the completion of the Project and a final set of Record Documents. The Original Work Product is to be reviewed and approved by the Owner's Project Representative.
- 1.29 The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the scope of the Work by the Construction Manager. All Work mentioned or indicated in the Contract Documents shall be performed by the Construction Manager as part of this Agreement unless it is specifically indicated in the Contract Documents that such Work is to be done by others. In the event the Drawings or the Specifications conflict in themselves or with each other, the Construction Manager shall submit a Request for Information (RFI) to the Architect for review and comment. After review the Architect shall submit the RFI to the Owner's Project Representative. Approval of the RFI may require the Architect to issue an Architect's Supplemental Instruction (ASI) to the Construction Manager to clarify or correct any conflict between the Drawings and Specifications. Discrepancies among the Contract Documents, the documents shall be construed according to the following priorities:

- Highest Priority- GMP Amendment excluding any Construction Manager attachments.
- Second Priority- Amendments to drawings and specifications – later date to take precedence
- Third Priority- Construction Management Agreement
- Fourth Priority- Specifications
- Fifth Priority- Drawings
- Sixth Priority- Request for Qualifications Solicitation Document and all addenda, and all written proposals and responses from Construction Manager.

However, the parties specifically acknowledge the terms and conditions in the Agreement shall not be amended by any Contract Documents unless any such amendment is in writing and executed by both parties.

Further, the parties specifically acknowledge that the terms and conditions in the Agreement shall not be amended by Attachments 1 through 16 of GMP Amendment Exhibit B, unless otherwise expressly agreed-upon by the parties in writing. If the contents and language of the Attachments conflict, or are in any way inconsistent, with the language and provisions in this Agreement or GMP Amendment, then the conflicting and inconsistent language, is of no effect, and the terms and conditions of this Agreement or GMP Amendment as applicable shall prevail.

- 1.30 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.
- 1.31 Where codes, standards, requirements and publications or public and private bodies are referred to in the Specifications, such references are to the latest revision prior to the date of receiving bids, except where otherwise indicated.

- 1.32 Where no explicit quality or standards for materials or workmanship are established for the Work, such Work is to be of good quality and what is reasonably inferable from the Drawings and consistent with the quality of the surrounding work and of the construction of the Project generally.
- 1.33 All manufactured articles materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed, directions and instructions unless otherwise indicated in the Contract Documents.
- 1.34 The mechanical, electrical, technology and fire protection drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Prior to beginning such work, the Construction Manager shall prepare coordination drawings showing the exact alignment, physical location and configuration of the mechanical, electrical, technology, and fire protection installations and demonstrating to the Owner's Project Representative satisfaction that the installations will comply with the preceding sentence and all applicable codes.
- 1.35 Exact locations for fixtures and outlets shall be obtained from the Architect before the Work is roughed in. Work installed without such information from the Architect shall be relocated at the Construction Manager's expenses.
- 1.36 Where the Work is to fit with existing conditions or Work is to be performed by others, the Construction Manager shall fully and completely join the Work with such conditions at no additional cost to the Owner, unless otherwise specified.
- 1.37 Ownership and Use of Documents. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, subcontractors, sub-subcontractors, or material suppliers on other projects, without the specific written consent of the Owner. The Construction Manager, subcontractors, sub-subcontractors, and material suppliers are granted only a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.
- 1.38 Project Communications/Project Management. The Construction Manager is required to use e-Builder, an Internet web based project management solution as the project management communications tool for the Project, unless otherwise directed by the Owner's Project Representative.

ARTICLE 2: OWNER'S RESPONSIBILITIES

2.1 Information and Services

- 2.1.1 The Owner's Project Representative shall provide full information in a timely manner regarding the requirements of the Project, including the Owner's objectives, constraints and criteria, space requirements and relationships, flexibility and

expandability requirements, special equipment and systems, and site requirements as reasonably requested by Construction Manager in writing.

- 2.1.2 The Owner's Project Representative shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs, which are the responsibility of the Owner. Contingencies established through this consultation are to be explicitly stated in the GMP and the monthly Application for Payment Form, and the use of said contingency is subject to the prior written approval of the Owner's Project Representative.
- 2.2 Owner's Designated Representative. The Owner hereby designates the School District's Superintendent or designee, as its representative with the authority to approve in writing changes contemplated in this Agreement where the monetary impact is less than \$25,000.00 or 10% of the GMP amount, whichever is less. This limit applies to each change, and a change may not be divided into separate changes to avoid the requirement of Owner approval. Subject to the above limitations, the Owner's Designated Representative is hereby delegated and assumes the Owner's responsibilities and authorities in the administration of this Agreement.
- 2.3 Owner's Project Representative. The Owner hereby designates the Chief Facilities Officer or designee, as its representative with the authority to assign the responsibility of managing the Project to a School District Project Field Representative (hereinafter "Owner's Project Representative"). The Owner's Project Representative is hereby delegated and assumes the Owner's responsibilities and authorities in the administration of this Agreement ONLY as noted herein.
- 2.4 Architect. The Owner has retained the Architect to provide basic architectural services, including normal structural, mechanical, electrical, plumbing, and technology engineering services, as described in the Owner's Agreement with the Architect. The Owner shall authorize and cause the Architect to provide those basic services, which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect, and Construction Manager. Upon request of the Construction Manager, the Owner's Project Representative shall furnish to the Construction Manager a copy of the Owner's agreement with the Architect.
- 2.5 The Owner shall advise the Construction Manager of any known special legal requirements relating specifically to the Project, which differ from those generally applicable to construction in the jurisdiction of the Project.
- 2.6 Information or services required of the Owner by this Agreement shall be furnished by the Owner with reasonable promptness after receipt from the Construction Manager of a written request for such information or services. Construction Manager shall refer to the Drawings and Specifications for items to be provided by the Owner and installed by the Construction Manager.
- 2.7 In the event the Construction Manager fails and refuses to correct any Work, which is not in accordance with the requirements of the Contract Documents, or, fails and refuses to perform the Work in accordance with the Contract Documents, the Owner at the Owner's discretion may direct the Construction Manager to stop the Work or any portion thereof, until such time as the non-conforming Work has been corrected.

- 2.7.1 In the event the Construction Manager fails to perform the Work in accordance with the Contract Documents, within a five (5) calendar day time period after receipt of written notice from the Owner's Project Representative with regard to such failure, the Owner may, without waiving its rights to pursue any and all other remedies, move forward to correct such deficiencies itself. In that event, the Owner will issue a Change Order deducting from any and all payments due to the Construction Manager the cost of correcting such non-conforming Work, including any compensation to third parties for additional services and expenses incurred as a result of such failure by the Construction Manager. The method for determining the Change Order value shall be determined solely by the Owner. In the event the payments due the Construction Manager are insufficient to pay for the Change Order referenced above, then the Construction Manager shall immediately pay the difference to the Owner.

ARTICLE 3: CONSTRUCTION MANAGER'S RESPONSIBILITIES

A. Preconstruction Phase Services. The Preconstruction Phase shall commence upon the issuance of a Notice to Proceed, Purchase Order, and a fully executed Preconstruction Services Amendment issued by Owner. The Construction Manager shall coordinate the preparation of the Contract Documents by consulting with the Owner's Project Representative and the Architect regarding Drawings and Specifications as they are being prepared, and recommend alternate solutions whenever design details affect construction feasibility, cost or schedules, including without limitation, providing value engineering options. The Construction Manager shall promptly notify the Owner's Project Representative and Architect in writing of any apparent defects in the Contract Documents for any Project when it is discovered, as well as any apparent defects in the design documents for any Project, including without limitation, the Drawings and Specifications set forth in any Work Order affecting such Project.

- 3.1 In the Preconstruction Phase, the Owner's Project Representative shall furnish with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of, such information, reports, surveys, Drawings and tests described in subparagraph 3.1.1-3.1.5 below, except to the extent that the Construction Manager knows or has reason to know of any inaccuracy.
- 3.1.1 Reports, surveys, drawings and tests concerning the conditions of the Project site, which are required by law.
- 3.1.2 Surveys describing physical characteristics, legal limitations and utility locations for the Project, and a written legal description of the Site. The surveys and legal descriptions shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.
- 3.1.3 The services of geotechnical engineers when such services are reasonably requested in writing by the Construction Manager and approved by the Owner's Project Representative. Such services may include but are not limited to test borings, test

pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

- 3.1.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
- 3.1.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested in writing by the Construction Manager and approved by the Owner's Project Representative.

3.2 Preconstruction Phase Services Schedule.

The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time established in the Preconstruction Services Amendment, Exhibit A.

- 3.3 Compensation for Preconstruction Phase Services. The compensation for Preconstruction Phase Services shall be as detailed in Exhibit A. At the time of application for payment submission the Construction Manager must provide backup supporting the labor, materials and reimbursables expended. A copy of all wage schedules shall be included with every application for payment. Labor costs to be included shall be the actual cost per hour paid for workers directly employed by the Construction Manager to perform Preconstruction Services, plus labor burden. "Labor Burden" shall be defined as a fixed percentage of the Construction Manager's direct labor costs, not subject to audit, and shall be set forth in the Preconstruction Services Amendment, Exhibit "A". Labor Burden shall not include any calculations for overhead and profit, shall exclude home office and support personnel not providing labor directly to the Project; and for employees only working on-site part-time, shall include only their pro rata portion of total salary directly connected to Work on the Project. The Construction Manager must provide the Owner's Project Representative with a complete summary of the Labor Burden for the staff proposed to be assigned to the Project. The Construction Manager shall provide any and all information requested by the Owner's Project Representative in order to fully evaluate the Preconstruction Services Proposal and all related applications for payment.

- 3.4 Liquidated Damages. Liquidated Damages for Preconstruction Phase Services shall be as detailed in Exhibit A.

- 3.5 Construction Estimates. The Construction Manager, if requested by the Owner's Project Representative, shall provide a preliminary evaluation of the Owner's Project program and budget. At the request of the Owner's Project Representative, the Construction Manager shall prepare and deliver to the Owner's Project Representative and the Architect, Construction Estimates as follows:

- 3.5.1 A preliminary Construction Estimate utilizing area, volume or similar conceptual estimating techniques within seven (7) days of the Construction Manager's receipt of the Schematic Design documents determined by the Owner's Project Representative to be 100% complete.

- 3.5.2 An itemized and detailed Construction Estimate with supporting data along with a Memorandum of Changes within twenty-one (21) days of the Construction Manager's receipt of the Design Development documents determined by the Owner's Project Representative to be 100% complete. Then, if the Owner's Project Representative and the Architect agree with such Memorandum of Changes, the Architect shall incorporate the changes described in the Memorandum of Changes into the Design Development documents. The Construction Manager hereby expressly acknowledges that by preparing the Memorandum of Changes, the Construction Manager represents to the best of its knowledge to the Owner's Project Representative that the Design Development documents (as modified by the Memorandum of Changes) and other Contract Documents related to the Project are consistent, feasible and sufficient to construct the entire scope of the Work within the Construction Estimate and within the Milestone Schedule.
- 3.5.3 A further refined Construction Estimate setting forth any adjustments to the previously submitted Construction Estimate along with a Memorandum of Changes within thirty (30) days of the Construction Manager's receipt of the Construction Documents determined by the Owner's Project Representative to be 75% complete. Then, if the Owner's Project Representative and the Architect agree with such Memorandum of Changes, the Architect shall incorporate the changes described in the Memorandum of Changes into the Construction Documents. The Construction Manager hereby expressly acknowledges that by preparing a Memorandum of Changes, the Construction Manager represents to the best of its knowledge to the Owner's Project Representative that the Construction Documents (as modified pursuant to the Memorandum of Changes) and other Contract Documents related to the Project are consistent, feasible and sufficient to contract the entire scope of the Work within the Construction Estimate and within the Milestone Schedule.
- 3.5.4 If any Construction Estimate submitted by the Construction Manager exceeds any previously approved Construction Estimate or the Owner's budget, if any, the Construction Manager shall make appropriate recommendations to the Owner's Project Representative, including without limitation, recommendations to modify the design, to reduce the Scope of Work and to reduce construction costs. In addition, the Construction Manager shall promptly advise the Owner's Project Representative of any adjustments to any Construction Estimate, which would cause the Project cost to exceed the Construction Estimate or the Owner's budget, if any, and shall promptly make recommendations for corrective action.
- 3.6 Progress Meetings. The Construction Manager shall meet with the Owner's Project Representative and others, at such times, and with such frequency, as the Owner's Project Representative may require during the Preconstruction Phase of the Project. The process of meeting, reviewing design documents, Drawings and Specifications and submitting, revising and resubmitting Construction Estimates is included in the Preconstruction Services and the cost of same is included in the Compensation for Preconstruction Phase Services, for each Project subject to Preconstruction Phase Services. Any revisions derived from these meetings are subject to the written approval of the Owner's Project Representative. Revisions resulting in additional costs to the Owner must be supported by documentation as deemed appropriate by the Owner's Project Representative prior to obtaining written approval.

3.7 Guaranteed Maximum Price (GMP) Proposal. The Construction Manager in preparation of the GMP shall make all reasonable efforts and strive to obtain at least three (3) written or sealed bids, as requested by Owner's Project Representative, for each trade category of the Work consistent with paragraph 15.33. The Construction Manager shall maintain these bids for the length of time specified in Article 3.16. The Construction Manager must provide the Owner's Project Representative with a copy of the Bid Advertisement(s), Bid Proposal Form and any related bidding information provided to the subcontractors prior to the presentation of the bids. After bid opening, the bid tabulations and supporting quotes are to be provided to the Owner's Project Representative for review in association with the presentation of the GMP. The Construction Manager shall include in the GMP the responses from the lowest responsible, responsive bidder. Should the Construction Manager determine it is in the best interest of the Owner to utilize a subcontractor other than the lowest responsible, responsive bidder; the Construction Manager's decision must be approved in writing by the Owner's Project Representative prior to entering into the subcontract. Should the Construction Manager see the need/opportunity to self-perform work to the benefit of the Owner, that portion of the work must be competitively bid as described in this Article, ONLY after disclosure to the Owner's Project Representative, and receiving written approval to bid. Should the Construction Manager see the need/opportunity to utilize a related party or subsidiary subcontractor, that portion of the work must be competitively bid as described in this Article, ONLY after disclosure to the Owner's Project Representative, and receiving written approval to bid. Self-performed Work proposed by the Construction Manager shall not include the cost of bonding.

3.7.1 When the Construction Documents are 100% complete, Construction Manager will propose a GMP, which is the total not-to-exceed amount of the Cost of Work and the Construction Manager's fee. The GMP shall include all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and any other services necessary for the proper execution and completion of the Work. No individual line item in the Schedule of Values (SOV) is implied to be a fixed amount but, rather, is subject to audit in accordance with the terms of this Agreement. In the event the SOV is to change, the Construction Manager must provide an updated SOV at the time of submitting its immediately following application for payment. All changes to the SOV must be supported by appropriate documentation (as defined in this Agreement), including, without limitation, any written approvals by Owner, as actual costs are paid and incurred, unless otherwise explicitly stated in this Agreement and/or Exhibit "B". Except as provided in Article 3 and Exhibit "B", the Cost of the Work shall not include:

- (a) Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except for those staff members agreed to in the General Conditions.
- (b) Discretionary bonuses, profit sharing, and any discretionary form of compensation or fringe benefits.
- (c) Expenses of the Construction Manager's principal office and offices other than the Project site office.
- (d) Overhead and general expenses.

- (e) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- (f) Costs due to the negligence or willful misconduct of the Construction Manager, Subcontractors, Suppliers, or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- (g) Tools and equipment with an individual cost of \$500 per unit or less, except for tools and equipment as agreed to in the General Requirements.
- (h) Costs other than costs included in Change Orders that would cause the GMP to be exceeded.
- (i) Cell phone charges in excess of \$75 per month.
- (j) Discretionary labor benefits such as, but not limited to, cost of living adjustments, auto allowances, etc., unless previously approved by the Owner in writing.
- (k) Payment and performance bonds, including individual subcontractor bonds and/or subguard insurance, that results in cumulative coverage in excess of the agreed upon GMP, without prior written consent from the Owner.
- (l) Subguard insurance for self-performed or Related Firm Work.
- (m) Construction Manager's financial, scheduling or construction management software, such as Timberline, Bluebeam, Prolog, Primavera, etc.
- (n) Overnight shipping in the State of Florida, unless approved in writing by the Owner's Project Representative.
- (o) Any costs not specifically and expressly described in this Article 3 or Exhibit "B".
- (p) The Owner's Project Representative shall make the final determination as to whether or not a line item provided in the Construction Manager's proposal may be included in the Cost of the Work.

3.7.2 Contingency. The GMP shall include the Contingency, which is defined as an allowance within the GMP, approved in writing by the Owner or Owner's Project Representative, if so designated by the Owner, for unforeseen costs during construction; additional scope previously unknown or undetermined that is requested by Owner or Owner's Project Representative; and/or for additional scope for the betterment of the Project, as requested by Owner or Owner's Project Representative. The Owner retains exclusive use of the Contingency, and in no event may cost overruns be taken from the Contingency, unless the overruns fall strictly within the definition of "Contingency" in this paragraph, and all expenditures have been approved in writing by the Owner or the School District's Superintendent, if so designated by the Owner, prior to being incurred.

3.7.2.1 Contingency Transfer Authorization Form. The Construction Manager shall submit four (4) originals of the Contingency Transfer Authorization Form to the Owner's Project Representative. The Contingency Transfer Authorization Form shall be executed by the Architect, Construction Manager and Owner.

3.7.3 Basis of Guaranteed Maximum Price. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include the following, and any additional information otherwise requested by the Owner's Project Representative:

- (a.) Summary of Cost by Division/Trade Package.
- (b.) General Requirements and General Conditions Cost Itemization, including Labor Burden- The amounts included in the GMP for General Requirements and General Conditions are considered not-to-exceed, fixed amounts and subject to audit. The GMP must include a certified statement that the labor costs represent those amounts that are actually paid to the persons that are to be working on the Project. Provide the labor burden for each of the submitted staffing, in accordance with paragraph 3.7.3(p)(iii) of this Article. General Requirements and General Conditions are not to be considered a lump sum amount and are auditable. At the time of application for payment submission, and in accordance with Article 3.16, the Construction Manager must provide backup supporting the General Requirements and General Conditions expended. The Labor Burden shall be a negotiated fixed amount. The Construction Manager must provide a detailed breakdown of the Labor Burden. No General Requirements or General Conditions line item can result in costs to the Project that are unreasonable and not cost effective. No line item can be based on a rental or periodic payment when the total cost for such rental or periodic payment exceeds the replacement value or cost for such items. In the event of such inconsistencies, the total value charged to Owner for such line items would be the replacement value or cost of the item. The Owner's Project Representative shall make the final determination as to whether or not a line item provided in the Construction Manager's proposal may be considered a General Condition or a General Requirement.
- (c.) Scope of Work, and Assumptions, Clarifications and Cost of Work Exclusions- Construction Manager must provide a detailed Scope of Work along with any Assumptions, Clarifications and Cost of Work Exclusions.
- (d.) Allowances by Trade- including unit prices and quantity amounts.
- (e.) Salvage Materials- Salvage materials shall be the property of the Owner and stored or removed from the site by the Construction Manager at the direction of the Owner's Project Representative. All items proposed to be demolished and scrapped, and all items proposed to be demolished for reuse by subcontractors, as part of the GMP, shall be noted as such in the GMP proposal by the Construction Manager, along with the projected salvage value.

- (f.) Milestone Delivery Schedule
- (g.) CPM Schedule- Itemized Breakdown; The CPM Schedule shall also be Resource Loaded if requested by the Owner's Project Representative and shall be provided at time of submission of the GMP.
- (h.) Payment and Performance Bonds- Within ten (10) business days after the GMP Amendment is agreed to by Owner and Construction Manager, Construction Manager shall provide Owner's Project Representative with Payment and Performance Bonds, after recordation in the Public Records of Osceola County, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Construction Manager. Construction Manager shall not commence construction of the Work on the Project prior to delivery of the recorded bonds to Owner's Project Representative.
- (i.) CM Insurance Provider Affidavit, Bond & Insurance Rate and Cost. Include descriptions of formulas used to allocate the cost to the project as well as third party evidence for the rates used or unit prices in the allocation. Certificates of insurance and copies of all policies, as required by the Owner, shall be furnished to the Owner's Project Representative at time of GMP. All insurances are to be considered reimbursable line items and may only be paid if accompanied with the appropriate backup.
- (j.) Project Submittal Schedule: The Project Submittal Schedule shall be furnished to the Owner's Project Representative within ten (10) days after the execution of the GMP Amendment. The Project Submittal Schedule shall be provided in a format approved by the Owner's Project Representative and shall include the list of all submittals required for the Project.
- (k.) Schedule of List of Drawings Signed and dated by the Architect/Engineer of Record and the Construction Manager. In addition, the Architect/Engineer of Record and Construction Manager must initial each page.
- (l.) Schedule/List of RFI/ASI's asked and answered during Bid Portion of the Work that is included in the Cost of the Work.
- (m.) CM List of Sub-contractors and suppliers with License Numbers- Within ten (10) business days after the GMP Amendment is agreed to by Owner and Construction Manager, Construction Manager shall provide Owner's Project Representative with the list of subcontractors and suppliers with license numbers.
- (n.) CM Affidavit Attesting to Subcontractor/Vendor Licensure Verification- Within ten (10) business days after this GMP Amendment is agreed to by Owner and Construction Manager, Construction Manager shall provide Owner's Project Representative with the Affidavit Attesting to Subcontractor/Vendor Licensure Verification.
- (o.) The Construction Manager's Bidder/Vendor Report- The Construction Manager's Bidder/Vendor Report shall be provided at the time the GMP is

submitted to the Owner's Project Representative. The Report shall be updated and provided to the Owner's Project Representative within five (5) days after the complete execution of this GMP Amendment. The Report shall identify the subcontractors that the Construction Manager intends to enroll in its subguard program. Subguard insurance for self-performed or related firm work will not be reimbursed by the Owner. Construction Manager shall update the Construction Manager's Bidder/Vendor Report as required by the Owner's Project Representative during the construction process and shall submit a final report at Substantial Completion.

- (p.) A list of all items that may be requested by Owner comprising the Construction Manager's General Conditions and General Requirements for the Project, including:
- i. Costs relating to transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, and equipment that are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value. Charges for material shall be the Construction Manager's net actual cost for the purchase of the material required to complete the Work. A reasonable allowance shall be made for waste and scrap. All materials purchased that exceed the quantities required to complete the Work shall be returned or sold for scrap, with the proceeds credited to the Owner. Credits for cost reductions available to the Construction Manager due to trade discounts, free material credits, and/or volume rebates will accrue to the benefit of the Owner. Cash discounts available on material purchases shall be credited to Owner if the Construction Manager is provided Owner funds in time for Construction Manager to take advantage of any such cash discounts. The Construction Manager is required to notify the Owner should the cash discount on a particular purchase equal or exceed \$1,000.00 to allow the Owner the opportunity to participate in the cash discount;
 - ii. costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
 - iii. that portion of the reasonable expenses of the Construction Manager's personnel incurred while in discharge of duties directly connected with execution of the Work. A copy of all wage schedules shall be included with every application for payment. Labor costs to be included shall be the actual cost per hour paid for workers directly employed by the Construction Manager to perform the Work at the site or, with Owner's approval, at off-site workshops, plus labor burden. "Labor Burden" shall be defined as a fixed percentage of Construction Manager's direct labor costs, not subject to audit, and shall be set forth in the GMP Amendment, Exhibit "B". Labor Burden shall not include any

calculations for overhead and profit, shall exclude home office and support personnel not providing labor directly to the Project; and for employees only working on-site part-time, shall include only their pro rata portion of total salary directly connected to Work on the Project. Night work and overtime work for the Construction Manager's non-salaried employees and subcontractors shall be subject to the Owner's Project Representative's written approval prior to performance of such work;

- iv. that portion of insurance and bond premiums incurred and paid that can be directly attributed to this Agreement. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- v. sales, use or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;
- vi. fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Agreement to pay;
- vii. data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or Computer-Aided Design Documents (CADD) costs unless separately, fully disclosed to and approved by the Owner in writing;
- viii. the cost of obtaining and using all utility services required for the Work; deposits made for such services should be tracked in writing by the Construction Manager so credit is applied back to the Owner when refunded at the completion of the Project;
- ix. the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- x. all reasonable costs necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services and hardware;
- xi. the cost of secure off-site storage space or facilities approved in advance by Owner;
- xii. rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however, any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools. Rented equipment shall be priced at the net actual rental cost, considering all trade and other discounts available to the Construction Manager. The aggregate equipment rental charges for any single piece of equipment shall be limited to the fair market value of the piece of equipment when first brought on to the job site. Fuel necessary to operate the equipment will be considered as a separate direct cost. All tools and equipment (including cameras, radios, computers, pagers, copiers, facsimile equipment, dictating units, site and storage trailers, vehicles and furniture) are to be agreed upon between the Construction Manager and the Owner prior to commencement of the Work and are to be billed separately. Costs of third party or rental equipment supplier insurance shall be declined and the insurance of such equipment shall be under the insurance program for the entire Project, unless previously approved in writing by the Owner for large equipment. Arrangements such as rent-to-own shall be made known to and shall accrue to the benefit of the Owner. Any

and all equipment acquired during this Project due to a purchase or rent-to-own arrangement shall be the property of the Owner. At the conclusion of the Project any of this equipment may, at the discretion of the Owner, be sold to the Construction Manager or others at a price to be negotiated at that time, or, if the Owner's Project Representative determines that the equipment will not benefit the Owner, then the Owner's Project Representative may instruct the Construction Manager to remove or otherwise dispose of the property at no expense to the Owner. The Owner requires the Construction Manager to perform an own versus lease analysis for tangible personal property, which includes but is not limited to trailers, toilets, fax machines, computers, and any other equipment necessary to carry on the Project. Own versus lease analysis shall be considered by the Construction Manager. The Construction Manager shall present his evaluation to the Owner's Project Representative for approval.

- 3.7.4 Construction Manager's Fee. Included within the GMP is the Construction Manager's Fee to be determined at the time of the GMP. The Construction Manager's Fee is hereby established as a percentage of the sum of the following: Direct Costs (materials, labor, equipment and subcontracts); allowances; and excluding all contingencies and General Conditions. The Construction Manager's Fee will only be calculated on Contingency as it is approved for use, in writing, through procedures established by the Owner. All Allowances not used by the Construction Manager shall be returned to the Owner as Project Savings and shall include the Fee applied at time of GMP. The sum of the Cost of the Work; General Conditions; insurance and bonds; and the Construction Manager's Fee shall not exceed the GMP, also referred to as the Contract Sum; subject to any additions and deductions by a change in the Work as provided in the Contract Documents. The Construction Manager's Fee shall constitute the Construction Manager's entire, exclusive and sole compensation. Allowable costs must be identified in this Agreement specifically in advance of being incurred, including the specific amounts for such items, or such cost item(s) not disclosed in advance in this manner must be specifically disallowed, whether the School District pays that amount or not. If the School District pays for an item in a pay request not appropriately included within the specific costs that are allowable, then the Construction Manager shall reimburse that cost amount to the School District promptly upon demand. All overhead, plus other costs and matters not specifically identified as a line item with a cost amount attached to it in this Agreement is specifically disallowed.
- 3.7.5 Assumptions and Clarifications. The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner's Project Representative, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner's Project Representative if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 3.7.6 Construction Schedule Development. The Milestone Delivery Schedule and Critical Path Method ("CPM") Schedule shall be developed by the Construction Manager and

shall include the services and activities of the Owner and Architect. As the design of the Project proceeds, the Construction Manager shall promptly notify the Owner's Project Representative and Architect, in writing, if circumstances indicate that the schedules may not be met, and the Construction Manager shall make appropriate recommendations to the Owner's Project Representative and Architect regarding same. As part of its scheduling responsibilities, the Construction Manager shall recommend to the Owner's Project Representative and Architect a schedule for procurement of long-lead time items, which may constitute part of the Work.

3.7.7 GMP Review. The Construction Manager shall meet with the Owner's Project Representative and Architect to review the GMP proposal and the written statement of its basis. In the event that the Owner's Project Representative or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis or both. The Construction Manager must provide the Owner's Project Representative with a complete summary of the Labor Burden for the staff proposed to be assigned to the Project. The Construction Manager shall provide any and all information requested by the Owner's Project Representative in order to fully evaluate the GMP Proposal.

- (a.) Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.
- (b.) Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in a GMP Amendment to this Agreement. The GMP shall be subjected to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.
- (c.) The Contract Sum is guaranteed by the Construction Manager not to exceed the amount provided in the GMP Amendment attached hereto as Exhibit "B" to this Agreement, subject to additions and deductions by changes in the Work provided in the Contract Documents. Costs which would cause the Contract Sum to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

3.7.8 Buyout Savings. In the event that the total of Cost of the Work, including the Construction Manager's Fee, is less than the GMP after giving effect to adjustments for changes in the Work, then the difference between the Cost of the Work, including Construction Manager's Fee and the GMP is defined herein as "Buyout Savings". The tracking and reporting of Buyout Savings to the Owner's Project Representative is the responsibility of the Construction Manager. After the GMP has been "bought out", the Construction Manager is required to provide in writing, and in a format deemed suitable by the Owner's Project Representative, a reconciliation of the referenced savings by individual trade or subcontractor contract. The Owner's Project Representative shall review and approve the Buyout Savings reported, and the Construction Manager shall be required to modify the Schedule of Values to include a "Buyout Savings" line item. Prior to the use of Buyout Savings, the Construction Manager must submit a request, signed by the Architect, to the Owner's Project Representative for approval. All remaining Buyout Savings (excluding the

Construction Manager's Fee applied at time of GMP) shall be returned to the Owner as Project Savings.

3.7.8.1 Buyout Transfer Authorization Form. The Construction Manager shall submit two (2) originals of the Buyout Transfer Authorization Form to the Owner's Project Representative. The Buyout Transfer Authorization Form shall be executed by the Architect, Construction Manager and Owner's Project Representative.

B. Construction Phase Services.

3.8 General. The Construction Phase shall commence upon the issuance of a Notice to Proceed, Purchase Order, and a fully executed GMP issued by Owner.

3.9 Changes in Work. Adjustments to the GMP because of changes in the Work may be determined by any of the methods listed in Article 7 of this Agreement.

3.10 Construction Phase Services Schedules.
The Milestone Delivery Schedule and CPM Schedule agreed to by the Construction Manager and Owner's Project Representative shall be managed by the Construction Manager. As the construction of the Project proceeds, the Construction Manager shall promptly notify the Owner's Project Representative and Architect, in writing, if circumstances indicate that the schedules may not be met, and the Construction Manager shall make appropriate recommendations to the Owner's Project Representative and Architect regarding same.

3.11 Recovery Schedule.
If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than three (3) days behind, the Owner's Project Representative may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within three (3) calendar days of the Owner's Project Representative's request. The Recovery Schedule shall describe in detail the Construction Manager's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.

3.12 Monthly Reports.
Construction Manager shall provide Monthly Progress Reports for both the Preconstruction Phase and Construction Phase of the Project.

The reports 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. These reports shall include, but not be limited to:

1. A summary narrative report;
2. Owner/Architect/Construction Manager Meeting Minutes
3. Project Schedule

4. Pay Application Cover Sheets and Summary Sheet for the reporting period
5. Owner Direct Purchases Log
6. Change Order Log
7. Contingency Log
8. Buyout Savings Log
9. Allowance Log
10. Submittal Log
11. Construction Change Directive Activity Log
12. Construction Progress Photos
13. Labor report
14. Weather Report
15. Failed Tests Report

The above reports shall be submitted at least on a monthly basis and shall accompany each monthly Application for Payment Form. The format of all reports shall be reviewed and approved by the Owner's Project Representative.

- 3.13 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner and the Construction Manager shall make provisions so they can be secured.
- 3.14 Tests, Inspections and Approvals of Portions of the Work. All tests, inspections and approvals of portions of the Work required by the Contract Documents or any applicable laws, ordinances, rules, regulations or orders of public authorities having jurisdiction, shall be requested by the Construction Manager at an appropriate time. The Construction Manager shall be responsible for making arrangements for such tests, requesting inspections and approvals with the School District's Building Department and/or an independent testing laboratory acceptable to the Owner, or with the appropriate public authority. The Construction Manager shall give the Architect timely prior notice of the date, time and place of the tests or inspections to be made so that the Architect may be in attendance. In the event the Architect, Owner's Project Representative or public authority having jurisdiction determine that any portion of the Work requires additional testing, inspection or approval, the Owner's Project Representative must approve such additional testing, inspection or approval in writing. The Construction Manager shall make arrangements for such additional testing, inspection or approval, and give timely prior notice to the Architect so that the Architect may observe such procedures. In the event the testing, inspection or approval described in this subparagraph reveals the failure of portions of the Work to be in compliance with the requirements of the Contract Documents or minimum Code, the Construction Manager shall bear all actual costs of such non-conforming Work, including the additional testing, inspection or approval, and the Architect's expenses. The Construction Manager is financially responsible for retesting where results of required inspections, tests or similar services prove unsatisfactory and do not indicate compliance with Contract Document requirements. Cost for correction of deficiencies discovered during an inspection or performance testing shall be the responsibility of the Construction Manager. The tracking and reporting of Failed Tests to the Owner's Project Representative is the responsibility of the Construction Manager. The Construction Manager is required to provide in writing, and in a format deemed suitable by the Owner's Project Representative, a report that indicates the specific details of all Failed Tests. The Failed Test Report shall be submitted to the Owner's Project Representative as soon as it has been determined a test has failed. The report shall also accompany each monthly Application for Payment Form. The Owner's Project Representative has the right to back charge the

Construction Manager at the end of the project for all re-testing and all stand-by time incurred by a consultant/contractor the Owner has contracted with for services related to the Project.

- 3.15 The Construction Manager shall obtain and deliver promptly to the Architect any occupancy certificates and any certificates of final inspection of any part of the Construction Manager's Work, and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, and air compressors, which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Architect shall be a condition precedent to Substantial Completion of the Work unless the certificates stated herein are withheld for reasons that are neither the fault nor the negligence of the Construction Manager.

C. Other Responsibilities.

3.16 Accounting Records and Owner's Right to Audit.

3.16.1 The Construction Manager shall establish and maintain a reasonable accounting system to keep full and detailed accounts and to exercise such cost controls as may be necessary for proper financial management under this Agreement; the accounting and cost control systems shall be satisfactory to the Owner, as necessary to audit and verify the completeness and accuracy of all costs incurred and contained in the Construction Manager's invoices, change order proposals, and monthly Application for Payment Forms. The Owner and the Owner's accountants or other duly authorized representatives or agents shall be afforded access to all of the Construction Manager's financial and other related records, and the Construction Manager shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law. If the Construction Manager receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, then the Construction Manager shall continue to maintain all Project records in accordance with this Article 3.16, and all related subparagraphs, until final resolution of the dispute or litigation.

3.16.2 "Records," as referred to in this Agreement, shall include any and all information, materials and data of every kind and character, including without limitation, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, Project Superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer-readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Construction Manager records which may have a bearing on matters of interest to the Owner in connection with Construction Manager's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Construction Manager compliance with contract requirements, b) compliance with Owner's business ethics

policies, and c) compliance with provisions for pricing Change Orders, invoices or claims submitted by the Construction Manager or his payees. Construction Manager shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Construction Manager will cooperate fully and will require Related Parties and all of Construction Manager's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data. If the Construction Manager receives notification of a dispute or the commencement of litigation regarding the Project within this four-year period, the Construction Manager shall continue to maintain all Project records until final resolution of the dispute or litigation.

- 3.16.3 Construction Manager shall make it a condition of all subcontracts relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their work, and that such records shall be open to audit by Owner or its authorized representatives during performance of the Work and until five years after its completion, in accordance with this Article 3.16 and all related subparagraphs.
- 3.16.4 Upon seven (7) calendar days' written notice, from the date of this Agreement to the last date described in the preceding paragraph 3.16.1, the Construction Manager shall provide to the Owner or its authorized representative(s) all records covered in the preceding paragraph 3.16.2 that are requested. If the provided records require further review or support, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Construction Manager's records at the Owner's reasonable expense, with adequate work space at the Construction Manager's facilities. Such rights to inspect, examine, review and copy shall extend to the records and documentation of subcontractors. Failure by the Construction Manager to supply substantiating records shall be reason to exclude or recover the related costs from amounts which might otherwise be payable by the Owner to the Construction Manager pursuant to this Agreement.

If at any time, Owner conducts an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged Owner, then Construction Manager shall pay to Owner the total aggregate amount of overcharges ("Overcharged Amount"), plus interest at the rate of 12% per annum. If the Overcharged Amount exceeds 0.1 percent (0.001) of the total construction costs for the Project, then Construction Manager shall also pay to Owner a proportionate amount ("Audit Amount") of the total audit fees incurred by Owner in connection with its audit of Construction Manager (the "Audit Fee"). For example, if the Overcharged Amount exceeds 0.1 percent (0.001) of the total construction costs for the Project, then Construction Manager shall pay to Owner 10 percent of the Audit Fee. For each additional 0.1 percent (0.001) increase in the Overcharged Amount, Construction Manager shall pay an additional 10 percent of the Audit Fee. Construction Manager

is not obligated to reimburse Owner for any portion of the Audit Fee if the Overcharged Amount is less than 0.1 percent (0.001) of the total construction costs for the Project.

Owner may recover the Overcharged Amount, with interest, 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, with interest, 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, interest, or Audit Amount be deemed a reimbursable Cost of the Work.

3.16.5 This Article 3.16, "Accounting Records and Owner's Right to Audit," including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Agreement.

- 3.17 The Construction Manager is solely responsible for reviewing and comparing the Contract Documents with each other and shall immediately report to the Architect any and all errors, inconsistencies or omissions. In the event the Construction Manager performs any Work with the knowledge that it involves an error, inconsistency or omission in the Contract Documents, the Construction Manager shall be responsible for such erroneous, inconsistent, or omitted Work. The Construction Manager is also responsible for taking such field measurements as are necessary in order to verify field conditions and to compare such field measurements and conditions with the Contract Documents. Any and all errors, inconsistencies or omissions shall be immediately reported to the Architect.
- 3.18 The Construction Manager shall be solely responsible for supervising and directing the Work, and shall have sole responsibility for determining appropriate construction means, methods, techniques, sequences and procedures, and for coordinating the Work under the Contract Documents. The Construction Manager shall be solely responsible to the Owner for the acts and omissions of all entities or persons performing or supplying any portion of the Work for which the Construction Manager has contracted.
- 3.19 The Construction Manager is not relieved of its obligations to perform the Work in accordance with the Contract Documents by any activity of the Architect, unless such change to the Work has been reduced to writing and executed by the Owner or the Owner's Project Representative and in compliance with School Board Rule.
- 3.20 Warranty. The Construction Manager hereby warrants to the Owner that all materials and equipment furnished under the Agreement will be of good quality and new, and that the Work performed will be free from any and all defects and will be in conformity with the requirements of the Contract Documents. All Work not conforming to these requirements may be declared defective by the Owner. If requested, the Construction Manager shall furnish evidence to the satisfaction of the Owner or Owner's Project Representative of the quality of the materials and equipment supplied.
- 3.21 In no case shall a substitution be granted where the Owner requires a sole source item to match existing School District standards.

- 3.22 In requesting approval of deviations or substitutions, the Construction Manager shall provide evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Architect or Owner's Project Representative, the evidence presented by the Construction Manager does not provide a sufficient basis for such reasonable certainty, the Architect may reject such substitution or deviation without further investigation. The Architect shall not unreasonably reject the request of the Construction Manager.
- 3.23 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Architect will not approve as equal to materials specified proposed substitutes, which in the Architect's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Construction Manager shall, if required by the Architect, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.
- 3.24 The Construction Manager shall pay all applicable sales, consumer, use and similar taxes for the Work, which are legally required.
- 3.25 No city or county permits or inspection fees are required on School District property. The Owner will pay costs of any impact, pollution control, any and all state and federal environmental permits including but not limited to clean water act permits, or connection fee charged to cover costs of central plants and main trunk line. When the Contract Documents require connection from the Work into utility lines or streets, the Construction Manager shall pay all costs of such connections, including any required permits or inspection fees, regardless of whether Work is done by the Construction Manager or by the utility supplier. Permits for such Work may need to be coordinated by the Architect for permit application.
- 3.26 In-progress inspections by city or county officials or their inspectors are not required on School District property. State certified inspectors or representatives employed by the Owner will check for compliance with applicable codes and monitor the course of construction on the Owner's behalf. This inspector may call to the Construction Manager's attention, Work which is considered to be not in accordance with the Drawings and Specifications, and therefore unacceptable. The Construction Manager will either repair or replace such construction, or appeal to the Architect for a ruling. The Architect will be the final authority as to acceptability of Work, and the inspector will not by inference, be accepting Work on the Architect's behalf. The inspector may from time to time request changes in the Work that will enhance the job or remove an undesirable condition. In such instances, the request will be in writing to the Construction Manager through the Architect and at the direction of the Owner's Project Representative.
- 3.27 The Construction Manager shall comply with and give notices required by all applicable laws, ordinances, rules, regulations and lawful orders of public authorities with regard to the performance of the Work. In the event the Construction Manager observes that any portions of the Contract Documents are not in compliance with the above, the Construction Manager shall immediately notify the Architect and Owner's Project Representative in writing of such variances. In the event the Construction Manager performs any Work with knowledge that it is at variance

with applicable laws, ordinances, rules, regulations and lawful orders of public authorities without giving such notice, then the Construction Manager shall be responsible for the attributable costs for such Work.

- 3.28 Construction Manager's Representatives. The Construction Manager shall employ competent Project Managers, Project Superintendents, and necessary assistants to be the Construction Manager's representatives, reasonably acceptable to the Owner's Project Representative. The Construction Manager's Representatives shall be in attendance at the Project Site full-time, unless otherwise agreed upon by contract, during the progress of the Work until the date Final Completion is accepted by the Owner, and for such additional time thereafter as the Owner's Project Representative and Construction Manager both agree to be necessary for the expeditious completion of the Work. The Owner shall not be liable to the Construction Manager in any manner whatsoever arising out of the Owner's objection to a proposed Construction Manager's Representative. The Construction Manager shall remove representatives, if requested to do so in writing by the Owner's Project Representative, and shall promptly replace her/him with a competent person reasonably acceptable to the Owner's Project Representative. If the Construction Manager must replace a representative after this Agreement has been approved, the Construction Manager must submit its request in writing to the Owner's Project Representative for review and approval. After initial approval by the Owner's Project Representative, the Construction Manager must submit the replacement representative's resume and hourly rate for review and approval.
- 3.28.1 Florida Storm-water Inspector. The Construction Manager shall have one (1) representative on staff and one (1) representative from their site contractor to be certified as a Florida Storm-water Inspector.
- 3.28.2 Vehicle/Travel Reimbursement. Vehicle/travel reimbursement for the Construction Manager's Representatives shall include only project-related necessary travel between the project site and the Construction Manager's local office, and shall not include any expenses for the Construction Manager's Representatives to travel to or from their place of residence.
- 3.29 The Construction Manager shall retain a competent registered professional engineer or registered land surveyor, acceptable to the Architect, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated Work such as, but not limited to, roads, utilities and site grading. The engineer or land surveyor shall certify the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.
- 3.30 The Construction Manager shall establish the building grades, lines, levels, column, wall and partition lines required by the various subcontractors in laying out their Work.
- 3.31 The Construction Manager shall arrange for and attend job meetings with the Architect, Owner's Project Representative and such other persons as the Architect and Owner's Project Representative may from time to time wish to have present. The Construction Manager shall be responsible for recording and distributing meeting minutes. The Construction Manager shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Construction Manager's own Project Superintendent. An authorized representative of any subcontractor or sub-subcontractor shall attend such meetings

if the representative's presence is required by the Architect or Owner's Project Representative. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, Change Orders, time schedules, and manpower, unless the above listed items require approval by the Owner or Owner's Project Representative. Any notices required under the Agreement may be served on such representatives. All meetings shall be documented in e-Builder using the Meeting Minutes Forms. The sign-in sheet, meeting minutes and any other documents distributed during the meetings must be attached to the appropriate Meeting Minutes Form, and then uploaded to e-Builder after each meeting. The Construction Manager is responsible for facilitating all construction-related meetings, distributing an agenda for each meeting and managing a sign-in sheet. The Construction Manager is also responsible for making sure the meeting minutes are documented and uploaded to e-Builder using the appropriate Meeting Minutes Form.

- 3.32 The Project Managers and Project Superintendents, as designated and employed by the Construction Manager, and accepted by the Owner's Project Representative and Architect shall not be reassigned from the job prior to Final Completion, except with the written approval of the Owner's Project Representative.
- 3.33 The Construction Manager shall be required to prepare a schedule of submittals for the Architect's approval, which is coordinated with the construction schedule, allowing sufficient time for architectural review. The submittals shall reference progress schedule dates for installation and shall also reference the appropriate Specification section. The Owner's Project Representative shall be provided with one copy of the accepted schedule of submittals for the Owner's records.
- 3.34 The Construction Manager shall maintain at the Project site one copy of the Construction Drawings, Specifications, addenda, Change Orders and any other modifications, which serve to indicate all current changes, in addition to all approved shop drawings, product data samples, and all other similar submittals. The Construction Manager shall maintain As-built Documents at the Project site. The As-built Documents shall document all changes in the Drawings and Specifications made during the course of the Work. The As-built Documents shall be in sufficient form and detail to permit the Owner to maintain and repair the Work after its completion. The Construction Manager shall submit the As-built Documents to the Architect and Owner's Project Representative within 15 calendar days of Substantial Completion of the Project, unless additional days are required and approved in writing by both parties. The As-built Documents include all markups, notes, and revisions to the original construction documents and shall accurately reflect the work as constructed.
- 3.35 The Construction Manager shall review, approve and submit to the Architect any and all shop drawings, product data, samples and any other similar submittals which are required by the Contract Documents, and allow a reasonable amount of time for review by the Architect, without impacting the Work schedule. The Construction Manager shall not perform any part of the Work relating to the shop drawings, product data, samples or any other similar submittals, until such items have been approved by the Architect.
- 3.36 The Architect's approval of any shop drawing, product data, sample or other similar submittal does not in any way relieve the Construction Manager of responsibility for deviations from the requirements of the Contract Documents. Further, the Construction Manager shall not be relieved of responsibility for any errors or omissions in the shop drawings, product data, samples or any other similar submittals simply by the Architect's approval. In the event a deviation is requested,

the Construction Manager shall specifically identify the deviation in writing to the Architect at the time of the submittal and the Architect is required to respond in writing to approve the specified deviation.

- 3.37 By approving and submitting shop drawings, product data, samples, and similar submittals, the Construction Manager represents that the Construction Manager has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted shop drawings, product data, samples, or similar submittals and verification of compliance with all the requirements of the contract documents. The accuracy of all such information is the responsibility of the Construction Manager.
- 3.38 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Architect shall be expected to make any independent examination with respect thereto.
- 3.39 The right of possession of the premises and the improvements made thereon by the Construction Manager shall be retained at all times by the Owner. The Construction Manager's right to enter arises solely from the permission granted by the Owner under the Contract Documents. The Construction Manager shall confine the Construction Manager's equipment, the storage of materials and the operations of the Construction Manager's workmen to the Project site and according to the directions of the Architect, and shall not unreasonably encumber the premises with the Construction Manager's materials.
- 3.40 The Construction Manager shall keep the premises, the surrounding area and property free from all waste, construction debris, or trash. At the completion of the Work, the Construction Manager shall remove all tools, construction equipment, machinery and surplus materials. In the event the Construction Manager fails to keep the premises, surrounding area and property in a clean condition, the Owner may do so and charge the cost back to the Construction Manager.
- 3.41 Immediately prior to the Architect's inspection for Substantial Completion, the Construction Manager shall completely clean the premises utilizing a licensed cleaning service. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Construction Manager at the Construction Manager's expense.

ARTICLE 4: ADMINISTRATION OF THE AGREEMENT

- 4.1 The Architect will provide administration of this Agreement and will serve as the Owner's representative during the Preconstruction and Construction Phases of the Work, and during any corrective Work.
- 4.2 The Construction Manager shall endeavor to communicate with the Owner's Project Representative through the Architect. Any needed communications by and with subcontractors or material suppliers shall be through the Construction Manager to the Architect.

- 4.3 The Architect shall be responsible for reviewing the Construction Manager's applications for payment and certifying amounts as due. Further, the Architect on behalf of the Owner shall have the authority to reject Work, which the Architect determines does not conform to the Contract Documents. However, this authority does not in any respect serve to release or otherwise discharge the Construction Manager's responsibility with regard to performing the Work in compliance with the Contract Documents.
- 4.4 The term "claim" as used herein shall mean a demand by either the Construction Manager or Owner seeking an adjustment to or interpretation of an Agreement term, payment of money, extension of time, or any other relief with regard to the terms of this Agreement or the Construction Documents. All claims are required to be made in writing by the parties asserting the claim.
- 4.4.1 Claims arising prior to final payment or the earlier termination of the Agreement shall be initially referred to the Architect for action.
- 4.4.2 All claims by either party must be made within 21 days after the incident giving rise to the claim or within 21 days after the complaining party first knew or should have known of the condition giving rise to the claim, whichever is later. Pending final resolution of any claim, unless otherwise mutually agreed between the parties in writing, the Construction Manager shall proceed with the performance of the Work and the Owner shall proceed to make uncontested payments in accordance with the Contract Documents.
- 4.4.3 The making of any progress payment or a final payment shall not in any respect constitute a waiver of any claim by the Owner.
- 4.5 If the Construction Manager encounters conditions at the site which are sub-surface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities as set out in the Contract Documents, then the Construction Manager shall immediately provide notice to the Owner's Project Representative and Architect of the conditions, no later than 21 days after the first observance of the condition. After investigation, the Architect will determine if conditions differ materially, and what, if any, adjustment is needed to the Contract Sum or Contract Time. The Architect's findings shall be reduced to writing and provided to both the Owner's Project Representative and Construction Manager. Either party may submit a claim as described in this Article in opposition to the Architect's determination within 21 days after the Architect has given notice of its decision.
- 4.6 Increase in Contract Sum. In the event the Construction Manager wishes to make a claim for an increase in the Contract Sum, the Construction Manager shall provide written notice to the Owner's Project Representative prior to proceeding to execute the Work. However, prior notice is not required for claims involving an immediate emergency endangering health, safety, welfare or property, and shall be provided as soon as possible.
- 4.7 Increase in Contract Time. In the event the Construction Manager wishes to make a claim for an increase in the Contract Time, the Construction Manager is required to provide written notice to the Owner's Project Representative. The Construction Manager shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish the Architect

and Owner's Project Representative with such supporting documents as the Architect and Owner's Project Representative may reasonably require. In the event adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data, establishing that the weather condition was abnormal, could not have been reasonably anticipated, and had an adverse effect on the scheduled Work. A Change Order for an increase in Contract Time does not automatically allow for the expenditure of additional General Conditions or General Requirements. If an increase in Contract Time and additional General Conditions or General Requirements are required, then the Change Order shall include the agreed upon change in the costs negotiated between the Construction Manager and the Owner's Project Representative. A Change Order for an increase in Contract Time must include the contracted date and the new date the Construction Manager is requesting to extend the Agreement. The Change Order must also indicate if the increase in Contract Time is only for Substantial Completion or Final Completion, or both.

- 4.8 In the event either party to this Agreement suffers injury or damage to person or property as a result of an act or omission of the other party, or any of the other party's employees or agents, written notice of such injury or damage shall be provided to the other party immediately, and in no event later than 21 days after the injury or damage. In the event there is to be a claim for additional cost or time, it shall be provided as described in this Article.
- 4.9 The Architect shall review claims and may (1) defer any action with respect to all or any part of a claim and request additional information from either party; (2) decline to render a decision for any reason which the Architect deems appropriate; or (3) render a decision on all or a part of the claim within ten (10) days from the date of the claim. The Architect shall notify the parties in writing of the disposition of such claim. The Construction Manager shall proceed as instructed, and all rights of both parties with respect to such claim shall be deemed to have been reserved.
- 4.10 Either party may pursue any claim against the other in any Court within the State of Florida having jurisdiction, provided the party has first complied with the provisions of this Article 4 with respect to such claim.
- 4.11 The dispute resolution process shall be as described in Section 218.76 (2), Florida Statutes.
- 4.12 **Waiver of Chapter 558 Procedures**
To the fullest extent allowed by law, the parties mutually agree to waive the provisions of Chapter 558, Florida Statutes. The School Board of Osceola County is a governmental entity and the parties agree that it is in their mutual interests to waive the procedural requirements contained in Chapter 558.

ARTICLE 5: SUBCONTRACTORS AND MATERIAL SUPPLIERS

- 5.1 The Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to the Owner's Project Representative and Architect for their information a list of possible subcontractors, including material suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner's Project Representative know of any objection to such subcontractor or material supplier. The receipt of such list shall not require the Owner's Project Representative or Architect to investigate the qualifications of proposed subcontractors or material suppliers, nor shall it waive

the right of the Owner's Project Representative or Architect later to object to or reject any proposed subcontractor or supplier.

- 5.2 Equal Employment Opportunity and Affirmative Action. The Construction Manager shall comply with applicable laws, regulations, and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.
- 5.3 The Construction Manager shall not subcontract with any proposed person or entity to whom the Owner's Project Representative or Architect has made a reasonable and timely objection. If the Owner's Project Representative or Architect has a reasonable objection to a person or entity proposed by the Construction Manager, the Construction Manager shall promptly propose another person or entity for that portion of the Work. Further, the Construction Manager shall not change a subcontractor, person or entity previously selected, in the event the Owner or Architect makes a reasonable objection to such change.
- 5.4 For purposes of this Agreement, a "Related Firm" is defined as a firm, company, partnership or other entity related to Construction Manager by common ownership, control or common officers or directors, including a holding company, subsidiary, affiliate, sister firm or firm with a majority of interlocking directors, officers or managing members of Construction Manager. Construction Manager shall not employ, retain or utilize the services of any employee, officer, director or member of a Related Firm in furnishing or performing any services or Work under this Agreement without prior written approval by the Owner. Construction Manager shall not permit any of its employees, officers, directors or members to be retained or employed by, or furnish services to, the Architect/Engineer, Contractor or any subcontractor on the Project.
- 5.5 The Construction Manager is required to enter into written agreements with each subcontractor who will perform any portion of the Work on the Project. The subcontract agreement shall incorporate the terms of the Contract Documents, and the terms of this Agreement. Further, where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with sub-subcontractors and material suppliers. Before entering into any agreement with a subcontractor, Construction Manager shall confirm that the subcontractor is properly licensed by the State and Osceola County, and any applicable municipality, for the portion of the Work to be performed on the Project and shall supply such information or proof of licensing, in writing, to Owner's Project Representative.
- 5.6 Each subcontract agreement for a portion of the Work shall be assignable by the Construction Manager to the Owner in the event of a termination of this Agreement by the Owner with or without cause, and only for those subcontract agreements, which the Owner accepts by notifying the subcontractor in writing.

ARTICLE 6: CONSTRUCTION BY OWNER

- 6.1 The Owner has the right to perform construction work related to the Project with the Owner's own employees, or by contracting with other individuals or entities. The Owner's Project Representative shall be responsible for coordination of activities of Owner's own employees or of any separate contractors, with the Work performed by the Construction Manager. The Construction Manager shall cooperate or participate with any separate contractor and the Owner's Project Representative in reviewing and coordinating construction schedules.

- 6.2 The Construction Manager shall not interfere with either the Owner or any separate contractor's ability to store materials and equipment, or perform construction work. In the event the Construction Manager's Work depends upon, or connects to, the construction by the Owner or any separate contractor, the Construction Manager is required, prior to proceeding with that portion of the Work, to immediately report to the Architect any and all discrepancies or defects which would render it unsuitable for continuation of the Work. In the event the Construction Manager fails to report, such failure shall be deemed an acceptance of the Work performed by the Owner or separate contractor by the Construction Manager and that the Work is fit and proper.
- 6.3 Any and all costs caused by delays or by improperly timed or coordinated activities, or defective construction Work, shall be borne by the party responsible. The Construction Manager shall within 24 hours notify the Owner's Project Representative, in writing, of any such damage and, upon approval by the Owner's Project Representative, commence repair of any damage caused by the Construction Manager to any Work or to the property of the Owner or any separate contractor.

ARTICLE 7: CHANGES TO THE WORK

7.1 General

- 7.1.1 Changes to the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement, by preparation and execution of a Change Order, a Construction Change Directive, or an order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- 7.1.2 Changes to the Work shall be performed under applicable provisions of the Contract Documents and in accordance with the terms of this Agreement, and the Construction Manager shall proceed promptly with the changes to the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

7.2 Change Orders. Any adjustments to the Contract Sum or Contract Time shall be by Change Order.

- 7.2.1 Change Orders will be preceded by a Proposal Request initiated by the Architect, and will be based upon agreement among the Owner's Project Representative, Architect, and Construction Manager regarding the change to the Work, the amount of the adjustment in the Contract Sum, if any, and the amount of the adjustment in the Contract Time, if any.
- 7.2.2 The Construction Manager shall provide all supporting documentation to support the Proposal Request within ten (10) calendar days of receipt of a Proposal Request, and the Architect shall forward the completed Proposal Request to the Owner's Project Representative within five (5) days after receipt of the information provided by the Construction Manager.
- 7.2.3 The Construction Manager's proposals for changes in the Contract Sum or Contract Time shall be submitted within seven (7) calendar days of the Owner's Project

Representative's request, unless the Owner's Project Representative extends such period of time due to the circumstances involved.

- 7.2.4 Any adjustments to the Contract Sum shall be based on the actual costs incurred in accordance with the terms of this Agreement and the Contract Documents, determined after the Work covered by the change is completed, plus a fixed percentage as defined in Exhibit B, Paragraph II. 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%.
- 7.2.5 Change Order Form. The Construction Manager shall submit five (5) originals of the Change Order Form (OEF 425), signed by the Architect to the Owner's Project Representative. The Change Order Form shall be executed by the Architect, Construction Manager and Owner. The Architect of Record for the Project shall certify in writing, and attach to the Change Order, that the cost of the requested change is fair, reasonable, and in proper proportion to the cost of the original work of the contract and shall recommend action thereon.
- 7.2.6 Accurate Change Order Pricing Information. Construction Manager agrees that it is responsible for submitting accurate cost and pricing data to support its Change Order Proposal Requests or other contract price adjustments under this Agreement. Construction Manager further agrees to submit Change Order Proposal Requests with cost and pricing data, which is accurate, complete, detailed, current and in accordance with the terms of the Agreement with respect to pricing of Change Orders. Subcontractor proposals provided to the Construction Manager must include detailed material and labor cost. Lump sum proposals from the subcontractors will not be considered.
- 7.2.7 Right to Verify Change Order Pricing Information. Construction Manager agrees that the Owner's Project Representative will have the right to examine the Construction Manager's records to verify the accuracy and appropriateness of the pricing data used to price Change Order Proposal Requests. Even after a Change Order Proposal Request has been approved, Construction Manager agrees that if the Owner, Owner's Project Representative, Owner's accountants or other duly authorized representatives or agents later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the Agreement regarding pricing of Change Orders; then an appropriate contract price reduction will be made. Any overcharges resulting in the Construction Manager submission of inaccurate, incomplete, outdated or non-compliant cost and pricing data shall be subject to the terms of Article 3, paragraph 3.16.4.
- 7.2.8 Requirements for Detailed Change Order Pricing Information. Construction Manager agrees to provide, and require all subcontractors to provide, accurate cost data in sufficient detail to enable Architect and Owner to evaluate and confirm its accuracy and the fair market value of all labor, materials, equipment, and incidentals required to accomplish the Work (lump sum amounts will not be considered accurate detailed

information). Construction Manager agrees to provide, and require all subcontractors to provide, a detailed breakdown of allowable labor, Labor Burden and material cost information in accordance with the terms of this Agreement and the Contract Documents. This information will be used to evaluate the potential cost of labor, Labor Burden, and material costs related to Change Order work. It is intended that this information represent an accurate estimate of the Construction Manager's actual labor cost components. This information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed-upon labor cost components used to price Change Orders will be subject to later audit to verify the accuracy and completeness of the actual costs incurred. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed-upon labor cost components are determined to be inaccurate. Labor Burden shall be billed at the agreed-upon fixed percentage set forth in Exhibit B, and will not be subject to audit.

- 7.2.9 In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in Change Order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to complete the Work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

7.3 **Construction Change Directives**

- 7.3.1 A Construction Change Directive may be used under the following circumstances:
- (a) A change in the Work is required, but the parties do not have the time to prepare a change order Proposal Request, complete the review process, and keep the Project on schedule;
 - (b) A change in scope is necessary, but the cost of the Work cannot be determined or agreed upon by the Owner's Project Representative until a later date;
 - (c) Construction Manager's proposals for changes in the Contract Sum or Contract Time are not received in a timely manner;
 - (d) Construction Manager's proposals for changes in the Contract Sum or Contract Time are not acceptable to Owner's Project Representative; or
 - (e) The changed Work should be started immediately to avoid damage to the Project or costly delay.
- 7.3.2 If a Construction Change Directive is necessary based on the reasons provided in subparagraph 7.3.1 above, then the Architect shall submit to the Owner's Project Representative a written Construction Change Directive confirming the direction to proceed with the changed work; and the Construction Change Directive will then be signed by the Chief Facilities Officer or his designee. The Construction Manager shall proceed with the changed work upon receiving the signed Construction Change Directive from the Owner's Project Representative. The Construction Manager is

required to manage a log of the activity when a Construction Change Directive has been issued.

7.3.3 All Construction Change Directives are to be followed up by the execution of a Change Order as soon as practical and, in any event, no later than 21 calendar days, after issuance of the Construction Change Directives. Any adjustments to the Contract Sum shall be by Change Order and shall be determined in accordance with paragraph 7.2.4 above. Any adjustments to the Contract Time shall be by Change Order and shall be determined by negotiations between the parties.

7.4 In the event the Construction Manager has been required to furnish performance and/or payment bonds as part of the base contract price, a final contract Change Order will be processed to account for the Construction Manager's net increase or decrease in bond premium costs associated with Change Orders to Construction Manager's base contract price. Contract adjustments related to any such increased or decreased costs related to insurance and/or bond coverage will not be subject to any Construction Manager markup for overhead and profit.

7.5 The Construction Manager is required to notify the Owner's Project Representative within seven (7) calendar days subsequent to an event that may lead to a claim by the Construction Manager or Subcontractor of any tier. The claim is to be presented to the Owner's Project Representative with a full accounting for all costs associated with the claim within thirty (30) calendar days, unless the Construction Manager requests in writing and the Owner's Project Representative agrees to a specific extension of this time. The reason for the time extension is to be made known to the Owner's Project Representative in the written request. Any claims that are not promptly and accurately reported in keeping with this Article will not be entertained. The Owner's Project Representative has the right to verify amounts claimed in the same manner as described in this Article.

7.6 All provisions contained in this Article 7 shall be governed by and subject to School Board Rule 8.52 entitled "Change Orders."

7.7 **Minor Changes in the Work**

7.7.1 The Architect may order the Construction Manager to proceed with minor changes in the Work that do not provide for any adjustment to the Contract Sum and/or Contract Time, if necessary, pursuant to its obligation to administer the Agreement in accordance with the Contract Documents.

ARTICLE 8: TIME

8.1 The Construction Manager shall promptly proceed with the Work and achieve Substantial and Final Completion within the agreed upon Contract Time.

8.1.1 **Substantial Completion.** Upon completion of the specific requirements set forth during the Substantial Completion Inspection and all other requirements of the Contract Documents, the Construction Manager shall submit four (4) originals of the Certificate of Substantial Completion Form (AIA G704) to the Owner's Project Representative and Architect indicating that the Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with contract requirements and is

ready for the Architect's review. The Certificate of Substantial Completion shall be executed by the Architect, Construction Manager and Owner.

8.1.2 **Project Final Completion.** When the Owner's Project Representative and Architect determine that the Work or designated portion thereof as defined in the Contract Documents is complete, the Architect shall issue six (6) originals of the Certificate of Final Inspection Form (OEF 209), which establishes the date of Final Completion. The Certificate of Final Inspection shall be executed by the Owner, Architect and Building Official.

8.2 As noted in Exhibit B attachments or as requested by Owner (length of time will vary depending on size and scope of project), the Construction Manager shall submit to the Architect a progress schedule for each class of work included in the schedule of values, broken down to a level of detail so that the Work can be properly monitored by the Owner, Construction Manager and Architect.

8.3 If the Architect has determined that the Construction Manager should be permitted to extend the time for completion, the dates in the progress schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial and Final Completion, and the dollar value of work to be completed as of the first of each month shall be adjusted pro rata.

8.4 Nothing herein shall limit the Owner's right to liquidated damages for delays by the Construction Manager or to any other remedy, which the Owner may possess under other provisions of the Contract Documents or by law.

8.5 Premium overtime for the purpose of maintaining the Construction Manager's schedule will not be reimbursed without the prior written consent of the Owner's Project Representative.

ARTICLE 9: PROGRESS PAYMENTS AND COMPLETION OF CONSTRUCTION

9.1 **Progress Payments.** Applications for Payment are to be submitted by the Contractor, along with supporting documentation, to the Architect and Owner's Project Representative for review. The Construction Manager shall provide any and all information requested by the Owner's Project Representative in order to fully evaluate the application for payment. Once the applications for payment are approved by the Architect and Owner's Project Representative, the Owner shall make progress payments to the Construction Manager as provided below and elsewhere in the Contract Documents. The application for payment submitted by the Construction Manager shall be based on the project's percentage completion. The Schedule of Values shall be the basis for review of the Construction Manager's application for payment. The Schedule of Values line items should mirror, or be directly traceable to, the final agreed-upon line items included in the fully executed GMP and consistent with the terms of this Agreement. The Facilities Division Bookkeeping Department is the single agent/point of contact for managing the processing of approved Applications for Payment.

9.1.1 The Construction Manager shall submit to the Owner's Project Representative an itemized application for payment for Work approved by the Architect and completed in accordance with the Schedule of Values listed in the GMP, along with all supporting backup documentation.

- 9.1.2 Application for Payment Form. The format of the Application for Payment Form shall be the American Institute of Architects (AIA) G702 certified and notarized by the Construction Manager and supported by the Continuation Sheet AIA form G703, which shall agree to the schedule of values as described in this agreement. Application for Payment Forms must be submitted monthly and will be processed under the terms of the Agreement and within the requirements of the Local Government Prompt Payment Act (§§ 218.70 *et seq.*, Fla. Stat.). Such payment shall be made by check or electronic fund transfer to a bank account specified by the Construction Manager. The Application for Payment Form shall be signed by the Construction Manager, and notarized, and shall be supported by sufficient data which serves to establish the Construction Manager's right to the payment, such as requisitions from subcontractors or material suppliers, and reflecting retainage of 10% which may be withheld until 50-percent completion of the Work, as defined by § 218.735(8)(b), Fla. Stat., or as otherwise defined by this Agreement. The Construction Manager shall submit two (2) originals of the Application for Payment Form to the Owner's Project Representative, signed by the Architect. The Application for Payment Form shall be executed by the Architect, Construction Manager and Owner.
- 9.1.3 The application for payment, in compliance with Article 9 and on the Facilities Division's Application for Payment Form, shall reflect the amount of Work completed each month separated by materials stored and labor, inclusive of Construction Manager's Fee, as a percent complete of each line item within the schedule of values for the Project. The Construction Manager shall provide all required invoices, payrolls, petty cash accounts and any other evidence required by the Owner's Project Representative to verify the values indicated as percent complete in the application for payment.
- 9.1.4 Applications for payment shall only be made on account of materials and equipment delivered and suitably stored at the Site for incorporation into the Work. Payments shall not be made for materials, which are not suitably stored at the Site.
- 9.1.5 Construction Manager's Job Cost Ledger. With each application for payment, the Construction Manager shall provide its computer-generated job cost ledger (accounting report) in both hard copy and Excel™ format. The Construction Manager shall provide a reconciliation of the job cost ledger with the Application for Payment Form and shall support the charges by including payrolls, petty cash accounts, and receipted invoices or invoices with check vouchers attached.
- 9.1.6 Lien Waivers. By submitting an application for payment, the Construction Manager warrants that full and complete title will vest in the Owner with regard to all Work covered by an application for payment, no later than the time of such payment. Additionally, all Work represented by a submitted application for payment shall be free and clear of any and all liens, claims, security interests or encumbrances in favor of any person or entity. Each application for payment shall be accompanied by a **Partial Waiver and Release of Lien Upon Progress Payment**, pursuant to s. 713.20, Florida Statutes, from the Construction Manager and each subcontractor, and, with the exception of the initial application for payment, a certificate from each subcontractor and other potential lienor stating that the subcontractor has been paid all amounts due the subcontractor or other potential lienor from previous applications for payment. The Construction Manager shall also submit with each application for

payment after the initial application a certificate stating that it has paid all subcontractors all amounts due the subcontractors from previous applications for payment. The Construction Manager is responsible for collecting all waivers and releases of liens upon progress payment and all certificates from all subcontractors or other potential lienors and submitting them together with the application for payment. Owner shall not consider the application for payment as complete unless all appropriate waivers and releases of liens are received. Once payment is made, each waiver and release of lien shall be unconditional with respect to all labor, services, or materials furnished for that associated application for payment. In addition to the foregoing, the following documents must be submitted with each application for payment:

- a. with the exception of the initial application for payment, **Partial Waiver and Release of Lien Upon Progress Payment**, pursuant to s. 713.20, Florida Statutes and a certificate stating that it has paid all subcontractors all amounts due the subcontractors from previous applications for payment;
- b. and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present application for payment.
- c. The Construction Manager's acceptance of the supportability and allowability of the charges submitted in the applications for payment is not demonstrated or inferred through the approval and signature of each monthly pay application that includes the referenced charges. (i.e. After application for payment approval by the Owner, charges included remain subject to the provisions and restrictions set forth here and remain subject to audit/recovery. CONSTRUCTION MANAGER SHALL NOT FRONT-END LOAD ITS SCHEDULE OF VALUES BY IMBALANCING IT OR BY INCREASING ANY ELEMENT THEREOF IN EXCESS OF THE ACTUAL COST, AND SUCH ACTS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.

9.1.7 Retainage. Owner may withhold from each progress payment made to Construction Manager an amount not exceeding 10% of the payment as retainage until 50-percent completion of the Work. After 50-percent completion, Owner must reduce to 5% the amount of retainage withheld from each subsequent progress payment. Owner is not, however, required to release any amounts that are the subject of a good faith dispute, claim, or demand. Upon Owner's release of retainage, which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Construction Manager shall timely remit payment of such retainage to those subcontractors and suppliers in accordance with § 218.735(8), Fla. Stat. Upon Substantial Completion, Owner may withhold as retainage up to 150% of the total estimated costs to complete any disputed items necessary to render complete, satisfactory, and acceptable the Work to be performed by Construction Manager under this Agreement and in accordance with the Contract Documents (see Paragraphs 9.2 - 9.7 of this Article, below).

- 9.1.8 Upon receipt of the Application for Payment Form, the Owner shall make payment to the Construction Manager under the terms of the Agreement and within the requirements of the Local Government Prompt Payment Act (§§ 218.70 *et seq.*, Fla. Stat.). The Construction Manager shall promptly pay each subcontractor out of the amounts paid to the Construction Manager on account of such subcontractor's portion of the Work, minus any percentages retained as retainage from payments made to the Construction Manager on account of such subcontractor's portion of the Work. The Construction Manager shall, by appropriate written agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors and material suppliers in a similar manner. However, neither the Owner nor the Architect shall have an obligation to pay or to see the payment of money to a subcontractor, sub-subcontractor or material supplier.
- 9.1.9 Any application for payment, progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of any Work not in accordance with the Agreement or Contract Documents. Notwithstanding the above, the Construction Manager shall receive final payment within 20 business days from the executed Certificate of Final Inspection, unless the Construction Manager is notified of failure to meet the requirements of the Agreement. If the Owner so desires, the Owner's accountants or representatives will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of final payment have been met, the Architect will, within seven (7) days after receipt of the written report of the Owner's accountants, either issue to the Owner's Project Representative a Final Application for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner's Project Representative in writing of the Architect's reason for withholding an Application for Payment.

9.2 Construction Manager's Completion List. When the Construction Manager deems the Work or a designated portion thereof as defined in the Contract Documents to be substantially complete, and in accordance with paragraph 1.19 of this Agreement, the Construction Manager shall prepare and submit to the Architect and Owner's Project Representative a comprehensive list of items to be completed or corrected, which comprehensive list shall be referred to as the "Construction Manager's Completion List."

- 9.2.1 The Construction Manager shall be responsible for completion and correction of all items on the Construction Manager's Completion List. Any item not included on the list that does not comply with the Contract Documents, shall be added to the list by the Owner's Project Representative and Architect, and promptly corrected by the Construction Manager. The submission of the list by the Construction Manager does not in any respect alter the ultimate responsibility of the Construction Manager to complete the Project in accordance with the Contract Documents.
- 9.2.2 Upon receipt of the Construction Manager's Completion List, the Architect and Owner's Project Representative, after inspection of the Work, may add additional items to the list, which the Construction Manager shall promptly correct to successfully reach Final Completion of the Work.

- 9.3 Certificate of Substantial Completion. When the Owner's Project Representative and Architect determine that the Work or designated portion thereof as defined in the Contract Documents is substantially complete, the Architect shall issue a Certificate of Substantial Completion.
- 9.3.1 The Certificate of Substantial Completion establishes: the date of substantial completion; includes the Construction Manager's Completion List as an attachment; the date by which the Construction Manager shall complete all items on the Construction Manager's Completion List, and such other items as the Architect and Owner's Project Representative deem appropriate. The Certificate of Substantial Completion shall be executed by the Architect, Construction Manager and Owner.
- 9.3.2 After Substantial Completion has been achieved, the Owner may, at its discretion, occupy or use any completed or substantially completed portion of the Work, prior to the final completion of the Project. Prior to such Owner partial occupancy or use, the Owner's Project Representative, Construction Manager and Architect shall inspect the area to be occupied in order to document the condition of the Work. However, in no event, shall the Owner's partial occupancy or use of the Work constitute acceptance of any Work not in compliance with the requirements of the Contract Documents.
- 9.4 Upon full execution of the Certificate of Substantial Completion, and upon the application for payment by the Construction Manager, the Owner may make payment to the Construction Manager adjusting the retainage withheld for the Work or portion thereof reflected in the Certificate of Substantial Completion. If a good faith dispute exists as to whether one or more items identified on the Construction Manager's Completion List have been completed pursuant to the Contract Documents, then, in accordance with § 218.735(7)(e), Fla. Stat., Owner may continue to withhold as retainage up to 150% of the total costs to complete the disputed items.
- 9.5 Final Completion Punch List. Not more than 30 calendar days after reaching Substantial Completion, the Owner's Project Representative and Architect together may develop a "Final Completion Punch List," which shall establish a single list of items required to render complete, satisfactory, and acceptable the Work to be performed by Construction Manager under this Agreement and in accordance with the Contract Documents.
- 9.5.1 The Owner's Project Representative shall deliver the Final Completion Punch List to the Construction Manager no more than five (5) days after the Final Completion Punch List has been developed and reviewed by Owner's Project Representative and Architect. The failure to include any corrective work or pending items not yet completed on the Final Completion Punch List does not alter the responsibility of the Construction Manager to complete the Project in accordance with the Contract Documents.
- 9.6 Certificate of Final Inspection. Final payment of the Contract Sum will be made after the Architect and the Owner's representatives have completed a satisfactory final inspection of the Project, performed a thorough review of the Construction Manager's final application for payment, and the "Certificate of Final Inspection" has been approved by the Owner.
- 9.7 Final Payment. It is understood and agreed, that final payment will not be withheld if a Certificate of Final Inspection is issued by the Owner, or if any other government agency refuses to give

final acceptance for any reason other than the failure of the Construction Manager to complete the Work in accordance with the Contract Documents.

- 9.7.1 Final payment and/or any remaining retainage shall not be paid to the Construction Manager until the Architect and Owner's Project Representative has received an affidavit in a form sufficient to the Owner's Project Representative that all indebtedness in connection with the performance of the Work for which the Owner or the Owner's property may be held liable or encumbered, have been fully paid or otherwise satisfied.
- 9.7.2 The final Application for Payment must be submitted with the following attachments:
 - a. AIA Document G707, "Consent of Surety to Final Payment"
 - b. AIA Document G706, "Contractor's Affidavit of Payment of Debts and Claims"
 - c. Contractor's Final Payment Affidavit required by Section 713.06, Florida Statutes
 - d. AIA Document G706A, "Contractor's Affidavit of Release of Liens"
- 9.7.3 The final application for payment shall be accompanied, by a **Waiver and Release of Lien Upon Final Payment**, pursuant to s. 713.20, Florida Statutes, from the Construction Manager and each subcontractor, and a certificate from each subcontractor and other potential lienor stating that the subcontractor has been paid all amounts due the subcontractor or other potential lienor from previous applications for payment. The Construction Manager shall also submit with the final application for payment a certificate stating that it has paid all subcontractors all amounts due the subcontractors from previous applications for payment. The Construction Manager is responsible for collecting all waivers and releases of liens upon final payment and all certificates from all subcontractors or other potential lienors and submitting them together with the final application for payment. Owner shall not consider the final application for payment as complete unless all appropriate waivers and releases of liens are received. Once final payment is made, each waiver and release of lien shall be unconditional with respect to all labor, services, or materials furnished for that associated application for payment.
- 9.7.4 In the event the Construction Manager fails to furnish such certifications as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Construction Manager as a condition of final payment and at the Construction Manager's expense, to furnish a bond in a form and amount satisfactory to the Owner to indemnify the Owner against such liens or claims.
- 9.7.5 The Construction Manager must provide certification in a form acceptable to the Owner's Project Representative, which establishes that all required insurance will remain in full force and effect after final payment and will not be cancelled or allowed to expire until at least 30 days prior written notice has been provided to the Owner.
- 9.7.6 Final payment by the Owner to the Construction Manager shall not constitute a waiver of any claim the Owner may have against the Construction Manager for Work not in compliance with the Construction Documents. However, acceptance of final payment by the Construction Manager, a subcontractor or material supplier shall constitute a waiver of any claims by that entity or individual, except those previously made in writing

and clearly identified as unsettled at the time of the final application for payment and payment thereon.

ARTICLE 10: CONSTRUCTION MANAGER’S SAFETY PROGRAM

- 10.1 The Construction Manager shall be responsible for initiating, maintaining and supervising a safety program in connection with its Work under the Agreement and Contract Documents. Reimbursable costs and expenses associated with the Safety Program may include first aid training and supplies, safety equipment, training equipment, and materials related to identification and containment or removal of hazardous materials, and any necessary safety certifications. All reimbursable safety program costs are fully auditable to verify the accuracy and completeness of actual costs incurred and must be submitted to Owner for advance approval. Advance approval of reimbursable costs by Owner does not waive Owner’s right to audit final safety program expenses to verify validity of expenses and actual costs incurred.
- 10.2 In the event the Construction Manager encounters material on the site, reasonably believed to be asbestos or polychlorinated byphenyl (PCB), which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as “hazardous waste,” the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner’s Project Representative in writing. The Owner’s Project Representative shall thereafter, as soon as reasonably possible, conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to the Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. Construction Manager may require the Owner’s Project Representative to furnish copies of reports of tests conducted by a qualified testing laboratory verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract Time may be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith, pursuant to the procedure for making a claim set forth in Article 4.
- 10.3 The Construction Manager shall not be required pursuant to the changes clause herein to perform without consent any work relating to hazardous waste.
- 10.4 The Construction Manager shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to employees and other persons on the Work Site, the Work and all materials and equipment to be incorporated into the Work, other property at the Work Site or adjacent thereto, and any other property of the Owner, whether or not forming part of the Work located at the Site or adjacent thereto and areas to which the Construction Manager has access.
- 10.5 The Construction Manager shall erect and maintain all reasonable safeguards for safety and protection, including signs and other warnings as appropriate, in its performance of the Agreement. In the event the Work requires the use or storage of explosives or other hazardous materials, equipment, or means or methods, the Construction Manager shall exercise the utmost care and carry on such activities under the continuous supervision of properly qualified individuals.

- 10.6 The Construction Manager shall promptly remedy any and all damage and loss to property referred to above. In the event the damage or loss is due in whole to the Construction Manager's negligence, the Construction Manager shall bear the entire cost of the loss or damage, if the damage or loss is due in part to the Construction Manager's negligence, the Construction Manager shall bear the cost that is determined, by the Owner, to be their portion of the loss or damage.
- 10.7 The Construction Manager shall designate its Project Superintendent on the Project as its safety program representative.
- 10.8 The Construction Manager shall provide and maintain in good, operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.
- 10.9 The Construction Manager shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Construction Manager shall provide and operate all pumps, piping and other equipment necessary to this end.
- 10.10 During the progress of the Work and at all times prior to the date of substantial completion or occupancy of the Work by the Owner, whichever is earlier, the Construction Manager shall provide temporary heat, ventilation, and enclosure, adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed work or work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided in the Contract Documents.
- 10.11 In the event of an emergency affecting the safety of persons or property, the Construction Manager shall utilize its judgment and discretion to prevent any threatened damage, injury or loss. In the event of such an emergency, the Construction Manager shall immediately notify the Owner's Project Representative and Architect, and coordinate and cooperate in the resolution of all such emergencies.

ARTICLE 11: INSURANCE AND BOND REQUIREMENTS

- 11.1 The Construction Manager shall deliver the required bonds and proofs of insurance to the Owner's Project Representative prior to the commencement of any Work, and in no event any later than 10 days after the execution of this Agreement.
- 11.2 The Construction Manager shall, throughout the performance of its services under this Agreement and throughout the term of this Agreement maintain and provide to the Owner the insurance coverages listed in this Article. The insurance policies shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. The Construction Manager shall provide insurance that may not be reduced, terminated, or cancelled unless 30 days prior written notice thereof is furnished to the Owner. Certificates of insurance and copies of all policies, as

required by the Owner, shall be furnished to the Owner's Project Representative within 10 days after the execution of this Agreement. In the event of any cancellation or reduction in insurance coverage, the Construction Manager shall obtain substitute coverage, without any lapse of coverage whatsoever. The insurance policies shall name the Owner as an additional insured (except for the professional liability and worker's compensation insurance).

- 11.3 The insurance required from the Construction Manager in this Article shall include all major divisions of coverage, and shall be on a commercial general basis including premises and operations including XCU (explosion, collapse, and underground hazards), Independent Contractor Hired Products and Completed Operations, and Owned, Non-owned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or others set forth in the Contract Documents, whichever is greater. All insurance shall be written on an occurrence basis, unless the Owner approves in writing coverage on a claims-made basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment.
- 11.4 The Construction Manager shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.
- 11.5 Construction Manager agrees to provide and maintain at all times during the term of this agreement and any renewals, policies of insurance against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services, and/or obligations of the Construction Manager under the terms and conditions of this agreement.
- 11.6 Construction Manager shall take special notice that the Board shall be named as an additional insured under the General Liability policy. The insurance policies shall be issued by companies licensed to do business in the State of Florida and grant The School Board of Osceola County thirty (30) days of advanced written notice of a cancellation, expiration or any material change in the specified coverage. The insurance companies are required to have a minimum rating of A- or better and a financial size category of VI or higher in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. All policies must remain in effect during the performance of the agreement. The minimum requirements for insurance coverage shall be as follows, or greater if required by law. Other coverages submitted by the Construction Manager and not required by the Owner, will not be reimbursed.
 - A. Commercial General Liability Insurance
 1. Each Occurrence
 - (a) One Million Dollars (\$1,000,000)
 2. General Aggregate
 - (a) Two Million Dollars (\$2,000,000)
 - B. Automobile Liability (if applicable) – Any Auto
 1. Combined Single Limit
 - (a) Two Million Dollars (\$2,000,000)

- C. Professional Liability Insurance (if Design/Build), with limits of not less than \$1,000,000 per occurrence or claim, and \$5,000,000 policy aggregate.

If this policy is written on a claims-made basis, the policy shall include an endorsement, certificate, or other evidence that coverage extends two years beyond the performance period of the Agreement.

- D. Workers' Compensation – The Construction Manager shall maintain statutory workers' compensation for all its employees who will be engaged in the performance of this Agreement, and, in case any work is sublet, the Construction Manager shall require the subcontractors similarly to provide Workers' Compensation Insurance as required by Chapter 440, Florida Statutes, for all the latter's employees unless such employees are covered by the protection of the Construction Manager.

1. State Statutory Limits

- E. Employer's Liability Insurance
- Each Accident \$1,000,000
 - Disease-Each Employee \$1,000,000
 - Disease-Policy Limit \$1,000,000

Construction Managers that have owner/operators that have filed a "Notice of Election to be Exempt" shall supply a copy of said notice.

Requirements for Construction Managers that qualify for an exemption under the Florida Worker's Compensation law in Chapter 440, Florida Statutes, are detailed below:

- (1) Incorporated or unincorporated firms with less than four employees shall be required to sign a Hold Harmless Agreement relieving the School Board of liability in the event they and/or their employees are injured while providing goods and/or services to the School Board.
- (2) Incorporated or unincorporated firms with four or more employees shall be required to provide a copy of their "Notice of Election to be Exempt", along with valid proof of coverage for non-exempt employees.

- F. Builder's Risk – (if applicable) Course of Construction insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions.

- G. Contractor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if Project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

- H. Certificate of Insurance: A certificate of insurance indicating that the Construction Manager has coverage in accordance with the requirements herein set forth shall be furnished by the Construction Manager to the Owner's Project Representative prior to the execution of the Agreement and annually upon renewal thereafter. Construction Manager agrees that School Board will make no payments pursuant to

the terms of the Agreement until all required proof or evidence of insurance have been provided to the Owner's Project Representative. Construction Manager agrees that the insurer shall waive its rights of subrogation, if any, against the School Board. The Construction Manager shall require the insurance company to provide the Certificate of Insurance directly to the Owner's Project Representative. The Construction Manager shall also provide a copy of the Certificate of Insurance, if and, when requested by the Owner's Project Representative. The Certificate of Insurance shall be dated and show:

- (1) The name of the insured respondent, the specified job by name, name of the insurer, the number of the policy, its effective date and its termination date.
- (2) Statement that the Insurer will mail notice to the School Board at least thirty (30) days prior to any material changes in provisions or cancellation of the policy.
- (3) The School Board of Osceola County, FL shall be named as an additional insured on General Liability Insurance as evidenced by the endorsement.
- (4) The School Board of Osceola County, FL shall be named as an additional insured on Contractor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions Policy as evidenced by the endorsement.

Loss Deductible Clause: The School Board shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or subcontractor providing such insurance.

- 11.7 The Construction Manager shall procure property insurance for any portion of the Work stored off Site or in transit, and the cost for such shall be borne by the Construction Manager.
- 11.8 Boiler and Machinery Insurance. The Construction Manager shall purchase and maintain boiler and machinery insurance if applicable to the Contract Documents. This insurance shall remain in full force and effect until final acceptance of the insured items by the Owner.
- 11.9 Performance and Payment Bonds. The Construction Manager shall furnish bonds covering the faithful performance of the Agreement and payment of any and all obligations arising under the Agreement as required by Florida law. Upon request, the Construction Manager shall furnish a copy to any person or entity requesting a copy. Such bonds shall be in conformance and compliance with Section 255.05, Florida Statutes, and shall contain the information and provisions set forth in the referenced section. Pursuant to Section 255.05, the Construction Manager shall record the performance and payment bonds in the public records of Osceola County, Florida. The Construction Manager shall provide the recorded copy of the bonds to the Owner.
- 11.10 Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Construction Manager, its subcontractors, sub-subcontractors, material suppliers, employees, or agents to the Owner or others. Any remedy provided to the

Owner, or the Owner's officers, employees, agents or assigns, by the insurance shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise.

- 11.11 No Waiver by Approval/Disapproval. Neither approval by the Owner nor failure to disapprove the insurance furnished by the Construction Manager shall relieve the Construction Manager of its full responsibility to provide the insurance as required by this Agreement.

ARTICLE 12: UNCOVERING AND CORRECTION OF THE WORK

- 12.1 In the event the Construction Manager covers a portion of the Work contrary to the request of the Architect or prior to an inspection by the Architect, any District personnel or the designated Building Official, the Construction Manager must, if requested in writing, uncover the Work, and then shall be required to replace the work at the Construction Manager's sole expense, without any change to the Contract Time.
- 12.2 In the event the Construction Manager covers a portion of the Work which the Architect has not specifically requested to inspect, the Architect may request the Construction Manager to uncover the Work. If such Work is in compliance with the Contract Documents, the costs of uncovering the Work and replacement of the Work shall be reimbursed to the Construction Manager and Owner will charge the Architect. If such Work is not in compliance with the Contract Documents, the Construction Manager shall bear such costs.
- 12.3 The Project is subject to, and shall be constructed in accordance with, the Florida Building Code, and all applicable codes referenced therein.
- 12.4 The Construction Manager shall promptly correct any and all Work rejected by the Architect and any and all Work which fails to comply with the requirements of the Contract Documents. The Construction Manager shall bear all of the costs for correcting such Work, including any compensation for the Architect's services.
- 12.5 The Construction Manager shall immediately remove from the Work Site any and all portions of the Work which are not in compliance with the requirements of the Contract Documents. In the event the Construction Manager fails to correct any non-conforming Work within a reasonable time, the Owner may correct such non-conforming Work in accordance with paragraph 2.7. In the event the Owner corrects the non-conforming Work, the Owner in its sole discretion may remove, store or sell for salvage any salvageable materials or equipment related to, or a part of, the non-conforming work at the Construction Manager's expense. If the Construction Manager fails to reimburse the Owner for such expenses, within seven (7) days after written notice, the Owner may take any and all action it deems appropriate in order to obtain reimbursement of its expenses under this subparagraph. Any action taken by the Owner under this subparagraph shall not in any respect serve to limit in law or equity the Owner's ability to place any other claim against the Construction Manager.
- 12.6 The Owner has the discretion to accept Work that is not in compliance with the requirements of the Contract Documents. In this event, the Owner shall reduce its decision to writing, which shall include any reduction, if any, to the Contract Sum as a result of the acceptance of non-conforming Work. Any such adjustment to the Contract Sum shall apply whether or not final payment has been made under this Agreement.

12.7 **One-Year Construction Manager Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Agreement, the Construction Manager, upon request by the Owner's Project Representative or the Architect, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

12.7.1 If within one (1) year after the date of Substantial Completion of the Work or after the date for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall promptly return to the Project and correct the deficient Work upon receipt of written notification from the Owner's Project Representative to do so. The obligation set forth in this subparagraph shall survive acceptance of the Work under this Agreement and any termination of the Agreement. The Owner's Project Representative shall give such written notice promptly after discovery of the deficient Work. This one (1) year Construction Manager Warranty described in this subparagraph does not impact or impair any manufacturer's warranty or the Owner's ability to make any other claim against the Construction Manager as allowed under Florida law.

12.7.2 The Construction Manager shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner's Project Representative, the appropriate Architect, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction. Any defects or failures in the work identified prior to the expiration of the one-year warranty period shall be completed even after the warranty period expires.

12.7.3 Should the Construction Manager fail to promptly correct any failure or defect, the Owner's Project Representative may take whatever actions it deems necessary to remedy the failure or defect and the Construction Manager shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Construction Manager's failure to correct the failure or defect.

12.7.4 **Reinstatement of Warranty.** When Work covered by a warranty has failed and has been corrected by replacement or rebuilding, the Construction Manager shall reinstate the warranty by written endorsement. The reinstated warranty shall be equal to the original warranty with an equitable adjustment for depreciation.

12.7.5 **Replacement Cost.** Upon determination that Work covered by a warranty has failed, the Construction Manager shall replace or rebuild the Work to an acceptable condition complying with requirements of the Contract Documents. The Construction Manager is responsible for the cost of replacing or rebuilding defective Work regardless of whether the Owner has benefited from use of the Work through a portion of its anticipated useful service life.

12.8 **Special and Standard Product Warranties.** The warranties provided in this paragraph shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. Prior to Final Payment the Construction Manager shall procure

and deliver to the Architect and Owner's Project Representative all Standard Product Warranties and all Special Warranties required by the Contract Documents. Manufacturer's disclaimers and limitations on product warranties do not relieve the Construction Manager of the Warranty on the Work that incorporates the products. A warranty shall not limit the Owner's rights with respect to latent defects, gross mistakes or fraud.

12.8.1 Special Warranties are written warranties required by or incorporated in the Contract Documents to extend time limits provided by standard warranties.

12.8.2 Standard Product Warranties are preprinted written warranties published by individual manufacturers for particular products and are specifically endorsed by the manufacturer to the Owner.

12.9 Warranty Implementation Plan. The Construction Manager shall develop and administer a Warranty Implementation Plan, in a format approved by the Owner's Project Representative, which shall include, but not be limited to:

1. Identifying roles and responsibilities of all personnel associated with the warranty process, including points of contact and telephone numbers within the Construction Manager's organization, subcontractors, manufacturers or suppliers.
2. Listing of all Certificates of Warranty for extended warranty items that includes, but is not limited to roof systems, HVAC test and balance, pumps, motors, transformers, fire protection and alarm system, sprinkler system, lightning protection system, surge suppression, etc.
3. A list for each warranted item, equipment, and feature of construction or system indicating:
 - a. Name of item.
 - b. Model and serial number.
 - c. Installation location.
 - d. Name and phone number of manufacturers or suppliers.
 - e. Spare parts source.
 - f. Terms of warranty.
 - g. Cross reference to warranty certificate.
 - h. Starting date and duration of warranty period.
 - i. Summary of maintenance procedures required to continue warranty in force. Cross reference to respective Operations & Maintenance Manual section.
 - j. Organization, names and phone numbers of continuously available warranty service personnel, size of local service area.
 - k. Expected response time and repair time expected for various equipment.
4. The Construction Manager's plan for attendance at warranty inspections.
5. Procedure and status of tagging all equipment covered by extended warranties.

6. Copies of instructions to be posted near selected pieces of equipment where operation is critical for warranty and/or safety reasons.

12.10 The terms set forth in this Article 12 shall survive the expiration of this Agreement and the Contract Time referenced in Exhibit B.

ARTICLE 13: TERMINATION OF THE AGREEMENT

A. Termination by Construction Manager

13.1 If the Work is stopped for a period of ninety (90) days through no act or fault of the Construction Manager, or a subcontractor, sub-subcontractor, material supplier, or their agents or employees, for any of the reasons listed below, then the Construction Manager, upon ten (10) days prior written notice to the Owner and the Architect, may terminate this Agreement and the Owner shall pay the Construction Manager for all Work executed.

- (a) The issuance of an order of a Court or any other public authority having jurisdiction;
- (b) An act of government, such as a declaration of national emergency, making materials unavailable; or
- (c) In the event the Owner has not made payment on an uncontested certificate for payment within the time stated in the Contract Documents.

13.2 If the cause of work stoppage is removed prior to the end of the ten (10) day notice period, the Construction Manager may not terminate the Contract.

B. Termination by Owner

13.3 The Owner may terminate the Agreement for any of the following reasons:

- (a) Repeated refusal or failure of the Construction Manager to supply sufficient, properly skilled workers, or proper materials to the Work Site;
- (b) Failure to make payment to subcontractors for materials or labor in accordance with the required agreements between the Construction Manager and subcontractors;
- (c) Disregard by the Construction Manager of any applicable laws, ordinance, or rules, regulations or orders of a public authority having jurisdiction;
- (d) Any real or perceived breach of a provision of the Contract Documents; or
- (e) Any other reason the Owner deems necessary.

Upon such an occurrence, the following procedures will be adhered to:

13.4 The Owner will, within thirty (30) days' notice, notify the Architect and the Construction Manager in writing, specifying the effective termination date of the Agreement.

13.4.1 After receipt of the notice of termination, the Construction Manager shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Agreement:

- (1) Stop all work;

- (2) Place no further trade contracts or orders;
- (3) Cancel all material and equipment orders as applicable; and
- (4) Take any action that is necessary to protect and preserve all property related to this Agreement, which is in the possession of the Construction Manager.

13.4.2 Within sixty (60) days of the date of the notice of termination, the Construction Manager shall submit a final termination settlement proposal to the Owner based upon costs up to the date of termination, reasonable profit on Work done only, and reasonable demobilization costs. All costs submitted under an Owner Termination shall be actual, measurable and subject to audit. No reimbursement shall be made for home office labor or overhead in any case after the date the Agreement is terminated. If the Owner agrees to pay for demobilization labor costs those costs shall be at ACTUAL cost of labor plus Labor Burden, insurance and non-discretionary fringe benefits with no markup for profit, overhead, multipliers or any other markup allowed. If the Construction Manager fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Construction Manager because of the termination and shall pay the determined amount to the Construction Manager. Such compensation shall be the Construction Manager's sole and exclusive remedy for termination.

13.4.3 If the Construction Manager and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute.

13.5 If the Owner elects to terminate the Agreement, the Owner may, without prejudice to any other rights or remedies, and after giving the Construction Manager and the Construction Manager's surety, if any, thirty (30) days written notice, terminate this Agreement with the Construction Manager and may, subject only to any prior rights of the surety, take possession of the Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager; accept assignment of subcontracts pursuant to this Agreement; and finish the Work by whatever reasonable method the Owner may deem appropriate. The Construction Manager shall not be entitled to receive any further payment under this Agreement. In the event the costs for completing the Work, including compensation for any Architect services and expenses, exceed the unpaid balance of the Contract Sum, the Construction Manager shall pay the difference to the Owner. This obligation for payment shall survive termination of this Agreement.

C. Suspension by Owner

13.6 The Owner may, without cause, require the Construction Manager to suspend the Work in whole or in part for such period of time as the Owner may determine. Such requirement shall be in writing, signed by the Owner. An adjustment will be made for any increases in the cost of performance of the Agreement caused by the suspension. In all such cases, the Owner and the Construction Manager shall agree upon an appropriate phasing out of the Work in such a manner that the Work may be resumed with a minimum of added cost to the Owner.

13.7 In the event the Work is temporarily suspended under this sub-paragraph, the Owner shall pay the Construction Manager for any non-deficient Work executed up to the date of said temporary suspension.

ARTICLE 14: TAX EXEMPT OWNER DIRECT MATERIAL/EQUIPMENT PURCHASE PROGRAM

- 14.1 Pursuant to Section 212.08(6), Florida Statutes, Owner may directly purchase various construction materials, supplies and equipment for use on the Project pursuant to the following Owner Direct Material/Equipment Purchase Program set forth in this Article 14 and Exhibit C, which is incorporated herein and made a part of this Agreement. The Owner shall appoint the Construction Manager as the Owner’s authorized representative with respect to any matter arising out of the purchase orders under the Owner Direct Material/Equipment Program. The Construction Manager will cooperate fully with the Owner with respect to the implementation of the tax exempt Owner Direct Material/Equipment Program. The Construction Manager is responsible for ensuring compliance with the terms and conditions of this Agreement, including the Owner Direct Material/Equipment Program, and shall make compliance with this program an express condition of all subcontracts relating to the Work. Failure or refusal of the Construction Manager, or any of its subcontractors, sub-subcontractors, suppliers, or vendors, to comply with the Owner Direct Material/Equipment Purchase Program will be deemed a breach of this Agreement by the Construction Manager. In the case of any such breach, Owner will comply with the requirements of the Owner Direct Material/Equipment Purchase Program by directly purchasing and paying for the materials and/or equipment, and Owner shall recoup from the Construction Manager any sales tax paid as a result of the Construction Manager’s breach of the Agreement by deductive change order. Per Rule 12A-1.094 of the Florida Administrative Code, to be entitled to purchase materials tax exempt for a the Project, the Owner is required to issue a Certificate of Entitlement to each vendor and to the Construction Manager to affirm that the tangible personal property purchased from that vendor will go into or become a part of the Work. The Owner is entitled to receive the benefit of the Owner Direct Material/Equipment Program, which includes sales tax savings for all applicable materials purchased in accordance with the Owner Direct Material/Equipment Program. The Owner shall obtain, with the assistance of the Construction Manager, the proper authorization from the State of Florida in the form of a Technical Assistance Advisement (TAA).
- 14.2 The Owner Direct Material/Equipment Purchase Program, which is attached hereto as Exhibit “C” and incorporated by herein reference, will be managed in accordance with the following provisions:
- 14.2.(a) The Owner has set an Owner Direct Purchase Goal of 20% for Renovation Projects and 30% for New Construction. The Construction Manager is to make every effort to meet or exceed the Owner’s expectation for this goal. The Construction Manager must also work with its subcontractors, sub-subcontractors, and material suppliers to ensure there is a streamlined process in place to maximize discounts offered for prompt payment of items purchased through the Owner Direct Purchase Program.
 - 14.2.(b) The Construction Manager shall provide a list of all intended material and equipment to be purchased under the Owner Direct Material/Equipment Purchase Program.
 - 14.2.(c) The Construction Manager shall provide a list of all intended subcontractors and their suppliers, vendors, and material men for consideration as Owner-Purchased Materials. This list shall be submitted with the preliminary Schedule of Values.
 - 14.2.(d) The Owner will issue its own purchase orders directly to the third party vendor or supplier of material and equipment purchased under the Direct Purchase Program.

The purchase order will be accompanied by the Owner's Exemption Certificate, which includes its name, address, and the exemption number with issuance and expiration date.

- 14.2.(e) All material and equipment purchased under the Owner Direct Material/Equipment Purchase Program is sold directly to the Owner and is directly invoiced by the vendor or supplier.
 - 14.2.(f) The Owner takes title and possession of all materials and equipment purchased under the Owner Direct Material/Equipment Purchase Program from the vendor or seller before they are incorporated into the Project.
 - 14.2.(g) The Owner assumes all risk of loss on all material and equipment purchased under the Owner Direct Material/Equipment Purchase Program. The Construction Manager cannot be held liable for damage or loss to the material or equipment.
 - 14.2.(h) The Owner is responsible for and pays the premiums on all insurance and/or bonding on materials or equipment purchased under the Owner Direct Material/Equipment Purchase Program. The Construction Manager does not share any economic benefits of proceeds from bond or insurance covering risk of damage or loss of the material or equipment.
 - 14.2.(i) The Owner makes direct payment to the third party vendor or seller for all purchases from its own funds or accounts for all purchases under the Owner Direct Material/Equipment Purchase Program.
- 14.3 The Owner agrees to process its purchase orders so that the progress of construction is not jeopardized. Should the Owner fail to process the purchase orders within a time frame so as not to delay the construction, the Construction Manager shall, at its sole discretion, void the Owner purchase order and purchase the item directly thereby waiving any rights the Owner may have for direct purchase tax savings. Should the items included in the purchase order represent any materials, supplies or equipment that are part of a subcontractor's scope of Work, any terms and conditions that the subcontractor deems to be warranted to protect their interest, shall also be included and/or substituted. Vendors and suppliers must be approved by the Owner prior to the processing of purchase orders.
- 14.4 The Construction Manager and its surety hereby agree that the performance bond penal amount shall be unaffected by any direct purchase deductive change order, which is made pursuant to the Owner Direct Material/Equipment Purchase Program.
- 14.5 The Construction Manager agrees that its builder's risk insurance coverage amount shall be unaffected by any direct purchase deductive change order implemented pursuant to the Owner Direct Material/Equipment Purchase Program.
- 14.6 Subject to the provisions and limitations of Section 768.28, Florida Statutes, to the extent authorized under Florida law, Owner agrees to indemnify and hold harmless Construction Manager, its subcontractors and suppliers of and from any claims, liability, or responsibility to the State of Florida for any action the State may take against any of them for the payment of any sales or use taxes as a result of Owner's direct purchase of such materials, supplies or equipment. Notwithstanding the foregoing, nothing herein is intended to be, nor shall be

construed as, further waiver, either express or implied, beyond the limited legislative waiver and limitations of liability set forth in Section 768.28, Florida Statutes.

- 14.7 The Owner shall have the sole option to require the vendor to include a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and Construction Manager. The cost of the supply bond shall be included in Construction Manager's GMP.
- 14.8 Owner shall not withhold retainage on any payments made to the vendor.

ARTICLE 15: MISCELLANEOUS PROVISIONS

- 15.1 Defining Terms. Unless otherwise noted, the terms used in the Agreement shall have their ordinary and customary meanings as used in the industry.
- 15.2 Indemnity and Hold Harmless. The Construction Manager shall hold harmless and indemnify the Owner, its agents and employees from and against any and all losses, damages, claims made by third parties, liabilities to third parties, litigation and other matters which may arise from, be caused, or result during or as a result of any act or omission of the Construction Manager, the performance of the Agreement, or breach of performance of the Agreement by the Construction Manager, or the performance or failure of performance of any product or service furnished by the Construction Manager under this Agreement with the Owner, or in any way or manner whatsoever related to any duty imposed on the Construction Manager related to, occurring during, or arising from the construction and subsequent occupancy of the Project. This hold harmless and indemnification provision shall include a duty to defend the Owner and to pay all reasonable attorneys' fees and expenses, including administrative and on appeal, incurred by the Owner in the defense of any matter covered by this provision. This hold harmless and indemnity shall survive the termination or expiration of this Agreement. The parties acknowledge that \$100.00 of the Owner's first payment to the Construction Manager shall be in consideration for this indemnification. This indemnity shall not be deemed to include matters which may be caused or result from an act or omission of the Owner. Nothing in this Agreement shall be interpreted or construed as an agreement on the part of the Owner to indemnify or hold harmless any party, including, but not limited to, the Construction Manager, the Architect, Subcontractors, Trade Contractors, or all other lower tier Contractors (Sub-Subcontractors).
- 15.3 Limitation of Liability. The Owner shall be liable only to the extent of its interest in the Project, and no officer, director, partner, agent or employee of the Owner shall ever be personally or individually liable with respect to this Agreement or for the performance of the Work. Any subcontract entered into by the Construction Manager shall include the foregoing limitation, which shall be effective in the event the Owner ever succeeds to the Construction Manager's rights and obligations under a subcontract.
- 15.4 Singular and Plural. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise.

- 15.5 Gender. Unless the context clearly indicates to the contrary, pronouns having a neuter, masculine or feminine gender shall be deemed to include the others.
- 15.6 Computation of Time. All references to any number of days shall mean calendar days unless the term "business days" is specifically included with the reference.
- 15.7 Entire Agreement. This Agreement and the Construction Documents incorporated herein by reference constitute the entire Agreement between the parties with respect to the matters covered by this Agreement. All prior negotiations, representations and agreements not incorporated in this Agreement are cancelled. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representative.
- 15.8 Binding Effect. Each and all of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon and inure to the benefits of the parties and their respective assigns, successors, subsidiaries, affiliates, holding companies and legal representatives, as allowed in this Agreement.
- 15.9 Notices. All notices shall be in writing, and may be served by: (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested; (b) delivering the same in person to such party, by (i) personal delivery or (ii) overnight courier; or (c) facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

Owner: Chief Facilities Officer
 Facilities Division
 The School District of Osceola County, Florida
 817 Bill Beck Boulevard
 Kissimmee, FL 34744
 Phone: (407) 518-2964
 Fax: (407) 518-2965

Construction Manager: Firm Name _____
 Address _____
 Phone: _____
 Fax: _____

By giving the other party at least 15 days written notice, each party shall have the right to change its address and specify as its new address any other address in the United States of America.

- 15.10 Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations under this Agreement shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.

- 15.11 Captions. The headings used for the various portions of this Agreement and the Contract Documents are inserted only as a matter of convenience, and for reference, and in no way define, limit or describe the scope or the intent of this Agreement, any section of this Agreement, or any section of the Contract Documents.
- 15.12 Severability. In the event the provisions of this Agreement are determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.
- 15.13 Cumulative Remedies. All rights, powers, remedies, benefits, and privileges are available under any provision of this Agreement to any party, is in addition to and cumulative of any and all rights, powers, remedies, benefits and privileges available to such party under all other provisions of this Agreement, at law or in equity.
- 15.14 Approval. Whenever any review or approval is required by any party, such party agrees that such review or approval will be promptly and expeditiously prosecuted to conclusion.
- 15.15 Further Assurances. The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.
- 15.16 No Partnership or Joint Venture. It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the parties or any third party, or cause any party to be responsible in any way for the debts and obligations of the other party.
- 15.17 No Construction Against Drafter. Each of the parties has been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorably or unfavorably against any party.
- 15.18 Third-Party Beneficiary. This Agreement has been made and entered into for the sole protection and benefit of the Owner, and its respective successors, and no other person or entity shall have any right or action under this Agreement.
- 15.19 No Assignments. This Agreement is for the personal services of the Construction Manager, and may not be assigned by the Construction Manager in any fashion, whether by operation of law or by conveyance of any type, including, without limitation, transfer of stock in the Construction Manager, without the prior written consent of the Owner, which consent the Owner may withhold in its sole discretion.
- 15.20 Force Majeure. With regard to performance under this Agreement, a party shall not be deemed to be in default of this Agreement, or have failed to comply with any term or conditions of this Agreement, if, for reasons beyond the parties reasonable control, including, without limitation acts of God, natural disaster, labor unrest, war, declared or undeclared, the existence of injunctions or requirements for obtaining licenses, easements, permits or other compliance with

applicable laws, rules and regulations, such performance is not reasonably possible within such time periods. In the event that any such reasons or conditions occur making performance not reasonably possible with the time periods set forth in this Agreement, then the time for such performance shall be extended until removal of such reasons beyond the parties reasonable control, provided that the party commences such performance as soon as reasonably possible thereafter and diligently pursues such performance.

- 15.21 Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Florida. Except for a suit in federal court, Osceola County, Florida shall be the proper place of venue for all suits to enforce this Agreement. Any legal proceeding arising out of or in connection with this Agreement shall be brought in the Circuit Courts of Osceola County, Florida, or if appropriate, the United States District Court for the Middle District of Florida, Orlando Division. Notwithstanding any other provision of the Contract Documents, the Owner does not agree to, nor shall the parties, arbitrate in any matter whatsoever any issue arising out of this Agreement, the Contract Documents or the performance thereof. The Owner does not agree to pay attorneys' fees to the prevailing party in connection with a dispute arising out of this Agreement or the Contract Documents.
- 15.22 Waiver of Jury Trial. The parties expressly waive the right to a jury trial for any claims or disputes arising out of, and in connection with, this Agreement and performance of the Work in accordance with the Contract Documents.
- 15.23 Dispute Resolution. Prior to initiating any litigation arising out of the Agreement, the parties agree to submit the dispute to non-binding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees and the cost of the mediator shall be split equally between the parties.
- 15.24 Right to Enter Into this Agreement. Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performances and obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full right and authority to enter into this Agreement and to perform its obligations under this Agreement. Upon written request, each party agrees to supply the other party with evidence of its full right and authority.
- 15.25 Prohibition against Contingent Fees. The Construction Manager hereby represents and warrants to the Owner that the Construction Manager has not employed or retained any company or person (other than a bona fide employee working solely for the Construction Manager) to solicit or secure this Agreement, and that the 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 the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or execution of this Agreement. If the Construction Manager breaches this provision, the Owner has the right to immediately terminate this Agreement without any liability to itself and, at its sole discretion, to deduct from the Contract Sum, or otherwise recover, the full amount of any such fee, commission, percentage, gift, or consideration.

- 15.26 Conduct While on School Property. The Construction Manager acknowledges that its agents, employees and representatives must behave in an appropriate manner while on the premises of any school facility and shall at all times conduct themselves in a manner consistent with School Board Rules and subject to the discretion of the site administrator or the Owner's Project Representative. It will be considered a breach of this Agreement for any agent, employee, or representative of the Construction Manager to behave in a manner which is inconsistent with good conduct or decorum, or to behave in any manner which will disrupt the educational program or constitute any level of threat to safety, health, and well-being of any student or employee of the Owner. The Construction Manager agrees to immediately remove any agent, employee, or representative if directed to do so by the site administrator, its designee, or the Owner's Project Representative.
- 15.27 Owner Transfer of Interest. If the Owner conveys its interest in the Project to a third party, any rights which the Owner may have against the Construction Manager arising from or in connection with this Agreement shall automatically transfer to such third party without the necessity of a written document or consent from the Construction Manager.
- 15.28 Public Entity Crime Information Statement and Debarment. Section 287.133(2)(a) of the Florida Statutes states: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list."
- 15.28.1 By signing this Agreement, the Construction Manager certifies, to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency, as defined by each federal agency's codification of the Government-wide Debarment and Suspension Common Rule for Nonprocurement, and do not appear on the Excluded Parties List System, as defined in 48 CFR 2.101;
 - (b) Have not, within a five-year period preceding the issuance of the Request For Qualifications (RFQ) that led to the award of this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract(federal, state or local) ; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - (c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b);

- (d) Have not within a five-year period preceding the issuance of the RFQ that led to the award of this Agreement had one or more public transactions or contracts (federal, state or local) terminated for cause or default; and
- (e) Are not presently, nor have been within the last three (3) years, listed on the convicted vendor list.

15.28.2 In addition to any other requirements of law, the Construction Manager shall notify the Owner within 30 days after the occurrence of any of the events, actions, debarments, suspensions, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described in paragraphs (a) through (e) above, with respect to the Construction Manager and its principals.

15.29 Background Check. The Construction Manager agrees to comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes, and, accordingly, agrees that all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access to or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes and the Owner. This background screening will be conducted by the Owner in advance of the Construction Manager or its personnel providing any services under the conditions described in the previous sentence. The Construction Manager shall bear the cost as a reimbursable expense of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Construction Manager and its personnel. The parties agree that the failure of the Construction Manager to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling the Owner to terminate this Agreement immediately with no further responsibilities or duties to perform under this Agreement. The Construction Manager agrees to indemnify and hold harmless the Owner, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Construction Manager's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes. The Construction Manager shall require each of the Construction Manager's subconsultants, separate consultants, and subcontractors on the Project to agree, in writing, to the provisions of this paragraph. The Construction Manager shall provide these written agreements to the Owner's Project Representative within five (5) days after the complete execution of each GMP Amendment.

15.30 No Waiver of Sovereign Immunity. Nothing in this Agreement is intended to serve, nor should be construed, as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.

15.31 Non-Discrimination. The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, sexual orientation, genetic information, or national or ethnic origin.

15.32 Compliance with Federal Grant Requirements. If made applicable by the use of federal grant funds in the Project or any other requirement as set out below, Construction Manager and its subcontractors shall comply with the following enactments, rules, regulations and orders:

Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3).

Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts and subcontracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts, which involve the employment of mechanics or laborers).

All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- 15.33 Local Business Participation Strategy. The Construction Manager shall comply with the Local Business Participation Strategy delineated in its Request for Qualifications Submittal and/or Oral Presentation, and submit MS Excel reports to the Owner to ensure accountability. Said reports shall be in the format as outlined in Attachment 15, titled "The Construction Manager's Bidder/Vendor Report". Construction Manager shall update said reports during the construction process, as requested by the Owner, and shall submit a final report at Substantial Completion. The Construction Manager's Bidder/Vendor Report shall delineate the utilization of local businesses as defined below.

To qualify as a local or "Osceola County Business" a firm must meet the following criteria:

1. Has its headquarters, manufacturing facility, franchise, or office located within the legal boundaries of Osceola County; and
2. Maintains a required business licenses by all the appropriate jurisdictions located in Osceola County.

- 15.34 Consultants' Competitive Negotiation Act. If the total fee paid to the Construction Manager exceeds the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY FOUR, the following provisions of the CCNA, Section 287.055(5)(a), Florida Statutes, shall apply:

- (a.) The Construction Manager shall execute and furnish to the Owner's Project Representative a "Truth-in-Negotiation Certificate," stating that the wage rates and

other factual unit costs supporting compensation are accurate, complete, and current at the time of executing this Agreement and any amendment to this Agreement. The original price and any additions thereto shall be adjusted to exclude any significant sums by which the District determines the Agreement amount was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs, and that such original Agreement adjustments shall be made within one year following the end of the Agreement and any amendment to this Agreement.

- (b.) The "Truth-in-Negotiation Certificate" form is attached to this Agreement as Exhibit D.
- (c.) The Contract Sum and any additions thereto shall be adjusted to exclude any significant sums by which Owner determines the Contract Sum was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

15.35 Evaluations. The Construction Manager will be evaluated by the Owner's Project Representative during the term of this Agreement, at intervals established by the Chief Facilities Officer and at the end of the Project. The evaluation results may be considered in measuring the Construction Manager's performance and may be included in the review process for future solicitations for construction management services. A copy of the evaluation(s) will be provided to the Construction Manager upon request.

ARTICLE 16: PUBLIC RECORDS ACT/CHAPTER 119 REQUIREMENTS

16.1 Construction Manager agrees to comply with the Florida Public Records Act (Chapter 119, Florida Statutes) to the fullest extent applicable, and shall, if this engagement is one for which services are provided, by doing the following:

- (a) Construction Manager and its subcontractors shall keep and maintain public records required by the School Board to perform the service;
- (b) Construction Manager and its subcontractors shall upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed that provided in chapter 119, Florida Statutes or as otherwise provided by law;
- (c) Construction Manager and its subcontractors shall ensure that public records that are exempt or that are confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the School Board; and
- (d) Construction Manager and its subcontractors upon completion of the contract shall transfer to the School Board, at no cost, all public records in possession of the Construction Manager and its subcontractors or keep and maintain the public records required by the School Board to perform the service. If the Construction Manager and its subcontractors transfer all public records to the School Board upon completion of the contract, the Construction Manager and its subcontractors shall destroy any duplicate public records that are exempt or that are

confidential and exempt from the public records disclosure requirements. If the Construction Manager and its subcontractors keep and maintain public records, upon completion of the contract, the Construction Manager and its subcontractors shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board, upon request from the School Board's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

16.2 The parties agree that if the Construction Manager and its subcontractors fail to comply with a public records request, then the School Board must enforce the Agreement provisions in accordance with the Agreement and as required by Section 119.0701, Florida Statutes.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, 817 BILL BECK BOULEVARD, KISSIMMEE, FL 34744, PHONE: (407) 870-4600, EMAIL: PUBLICRECORDS@OSCEOLA.K12.FL.US

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DRAFT

Signature

IN WITNESS WHEREOF, the above parties have executed this instrument by their undersigned representatives pursuant to the authority of their governing bodies as of the approval date set forth in this Agreement.

OWNER:
The School Board of Osceola County, Florida

By: _____
Ricky Booth, Chair

Date Approved: _____

ATTEST:
By: _____
Dr. Debra Pace, Superintendent

CONSTRUCTION MANAGER:
[FIRM NAME]

By: _____

Print Name: _____

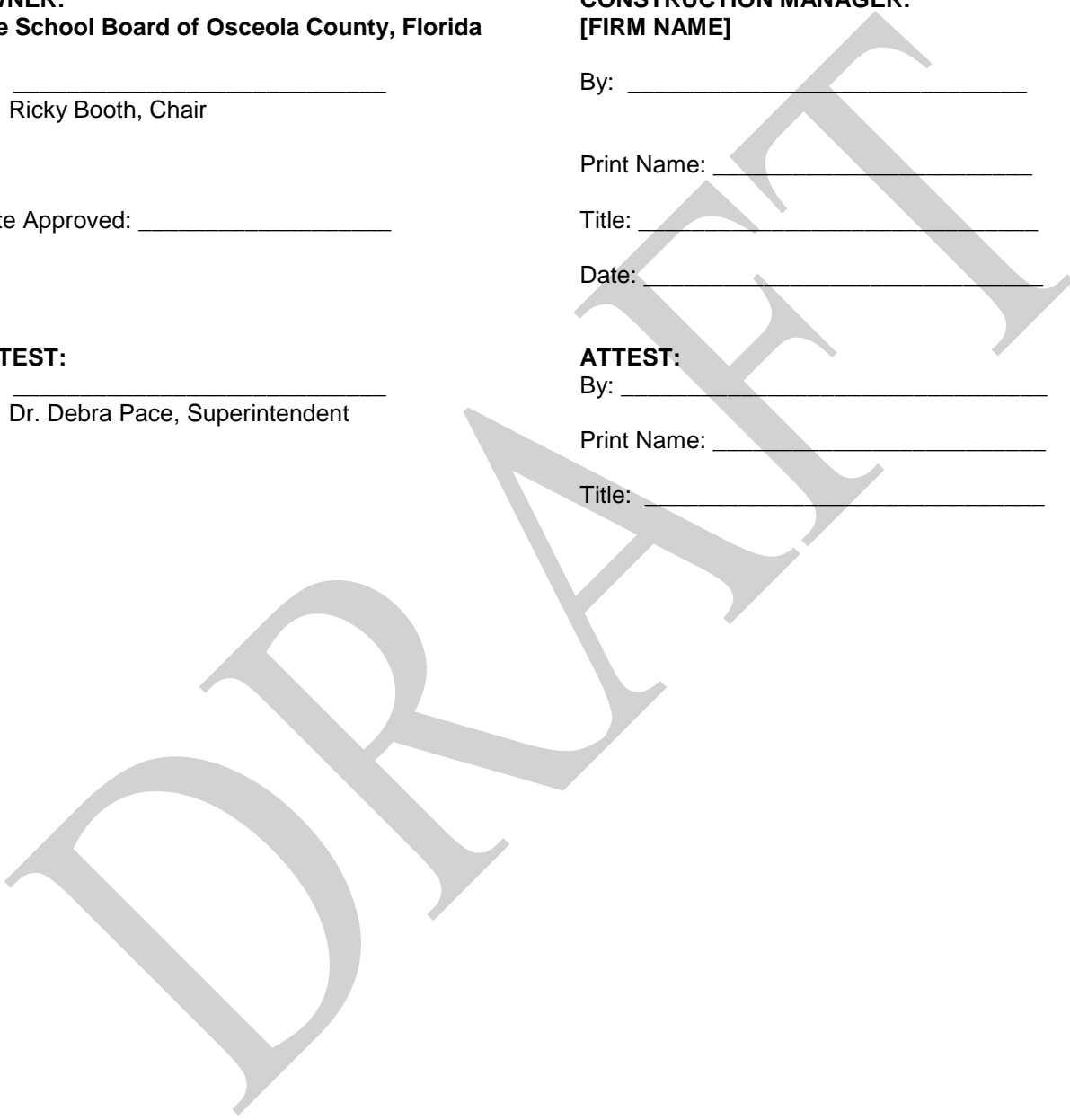
Title: _____

Date: _____

ATTEST:
By: _____

Print Name: _____

Title: _____



The School District of Osceola County, Florida

**Construction Management Agreement
Exhibit A
Preconstruction Services Amendment**

Pursuant to Article 3 of the Agreement (C-_____) dated _____XX,20____, between The School Board of Osceola County, Florida (hereinafter "Owner") and _____ (hereinafter referred to as "Construction Manager"), the Construction Manager shall provide Owner with Preconstruction Services and their associated deliverables in accordance with the Preconstruction Services Proposal for the _____ Project (hereinafter referred to as "Project"), dated _____, which is attached to and made a part of this Agreement as Attachment 1.

1. Compensation and Schedule for Preconstruction Phase Services.

- 1.1 For the services described in Article 3, the Construction Manager's compensation shall be calculated as a not-to-exceed fixed fee of **\$0.00**, to be paid on a monthly basis. Each payment shall be based on actual Work performed during the month. A not to exceed reimbursable cost for printing, supplies and shipping for bid documents has been established in the amount of **\$0.00** for the Preconstruction Services portion of this Project.
- 1.2 Compensation for Preconstruction Services shall be equitably adjusted, upon Owner approval, if such services extend beyond **\$0.00**, or if the originally contemplated scope of services is significantly modified.
- 1.3 The Construction Manager's Proposal must include a certified statement that the labor costs represent those amounts that are actually paid to the persons that are to be performing Preconstruction Services on the Project, in accordance with Article 3. The Construction Manager's proposal must also include the Labor Burden for each of the submitted staffing, in accordance with paragraph 3.3 of the Agreement. Labor Burden is defined as a fixed percentage of Construction Manager's direct labor costs, and is not subject to audit. The Labor Burden Rate for the Project, to include Preconstruction Services, is agreed to by the Construction Manager and Owner as _____%. The Construction Manager shall provide any and all information requested by the Owner's Project Representative in order to fully evaluate the Preconstruction Services Proposal and all related applications for payment.
- 1.4 The following shall be provided to the Owner's Project Representative within five (5) days after the complete execution of this Construction Management Agreement and Preconstruction Services Amendment.
 - a. Provide the "actual" detailed Labor Burden breakdown.
 - b. Provide detailed Labor Burden breakdown showing how you arrived to the agreed upon Labor Burden percentage.
 - c. Provide copies of your Certificate of Insurance and Licenses.
- 1.5 Contract Time. The date of Final Completion for the Work established by this Amendment shall be on or before **XX/XX/20XX**. Accordingly, the contract period for the Work is established as **XX** calendar days from the date of the Notice to Proceed (**XX/XX/20XX**). Accordingly, the contract period for this Work is established as **XX** calendar days from Final Completion to Substantial Completion.

2. Liquidated Damages. Time is of the essence in the performance of the Preconstruction Services. The Owner and Construction Manager agree that the losses suffered by Owner, if Final Completion of the Preconstruction Services is not achieved, are not reasonably ascertainable at this time. Construction Manager acknowledges and agrees that, since time is of the essence, the Owner will suffer financial and other losses if Final Completion of the Preconstruction Services is not achieved within the Contract Time, as said Contract Time may be adjusted pursuant to the terms of the Contract Documents. Should the Construction Manager fail to achieve Final Completion of the Preconstruction Services within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of **\$TBD** for each calendar day thereafter until Final Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Construction Manager fails to achieve Final Completion of the Preconstruction Services within the Contract Time. Further, the parties acknowledge that it would be extremely difficult, if not impossible, to ascertain Owner's actual damages with any degree of certainty in the event Construction Manager fails to achieve either Final Completion of the Preconstruction Services within the Contract Time.

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DRAFT

Signature

IN WITNESS WHEREOF, the above parties have executed this instrument by their undersigned representatives pursuant to the authority of their governing bodies as of the approval date set forth in this Agreement.

OWNER:
The School Board of Osceola County, Florida

CONSTRUCTION MANAGER:
[FIRM NAME]

By: _____
Dr. Debra Pace, Superintendent

By: _____

Print Name: _____

Title: _____

Date Approved: _____

Date: _____

ATTEST (WITNESS):

ATTEST (WITNESS):

By: _____

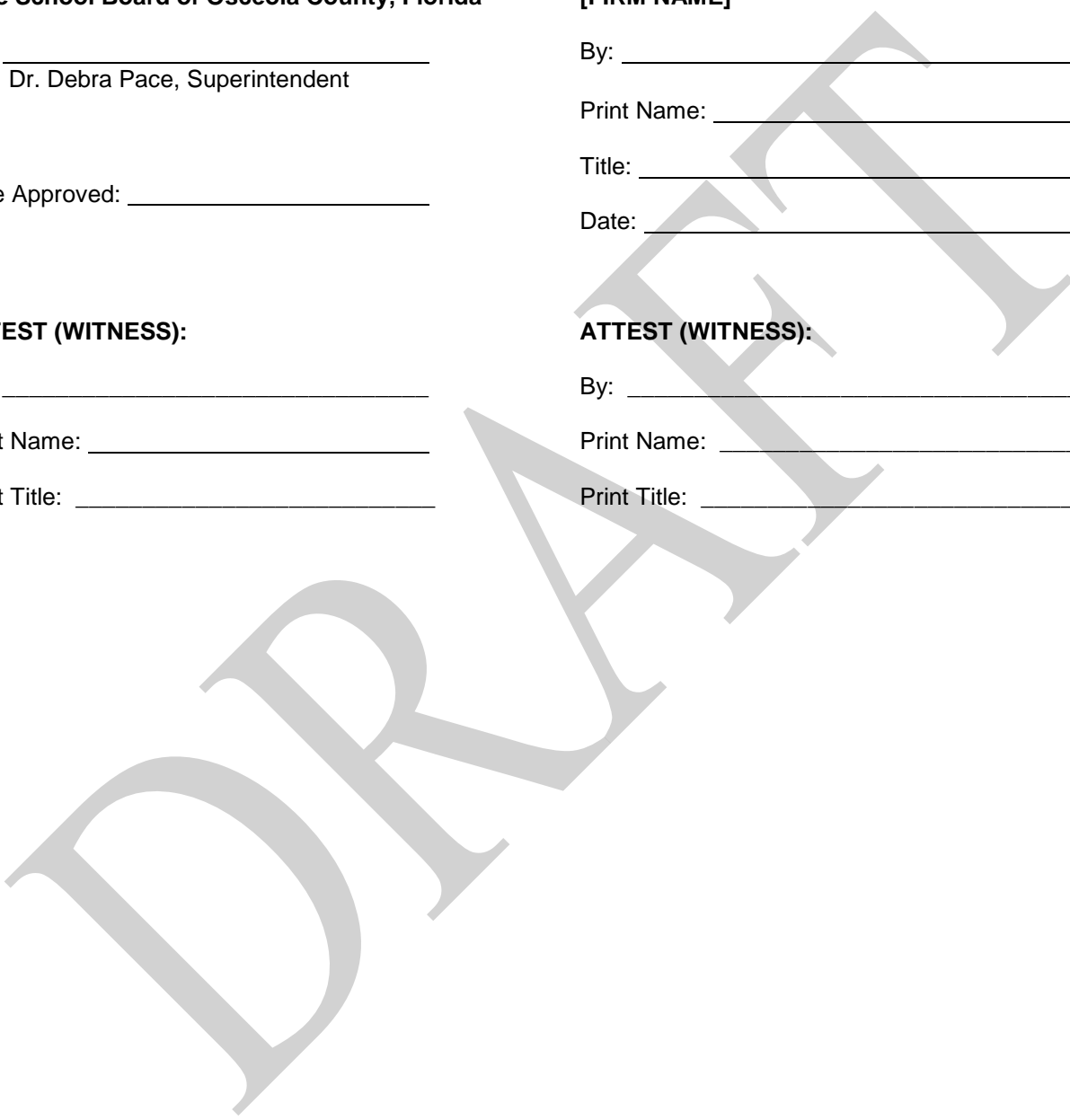
By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____



The School District of Osceola County, Florida

Construction Management Agreement

Exhibit B

Guaranteed Maximum Price (GMP) Amendment No. 1

Pursuant to Paragraph 3.7 of this Agreement between The School Board of Osceola County, Florida (hereinafter "Owner") and _____ (hereinafter referred to as "Construction Manager" or "CM") for the _____ (hereinafter referred to as "Project"), the Owner and Construction Manager establish the Guaranteed Maximum Price and Contract Time for the Work as set forth herein below.

I. Guaranteed Maximum Price (GMP)

The Construction Manager's Guaranteed Maximum Price for the Work, including the Cost of the Work and the Construction Manager's Fee is _____ Dollars (\$0.00).

II. Scope of Work and Fee

The above GMP is for the Full and Final GMP for the _____, including all associated site work. This Amendment establishes the Construction Manager's Fee in this GMP as TBD% of the sum of the following: Direct Costs (materials, labor, equipment and subcontracts); allowances; and excluding all contingencies and General Conditions. For changes in the Work, the Construction Manager's Fee is established as TBD% of the Direct Costs.

III. Contract Time

The date of Substantial Completion of the Work established by this Amendment shall be on or before XX/XX/XXXX. Accordingly, the contract period for the Work is established as XX calendar days from the date of the Notice to Proceed (XX/XX/XXXX) to Substantial Completion. The date of Final Completion of the Work established by this Amendment shall be on or before XX/XX/XXXX. Accordingly, the contract period for this Work is established as XX calendar days from Substantial Completion to Final Completion.

The date of Project Final Completion of the Work established by this Amendment shall be on or before XX/XX/XXXX. Accordingly, the contract period for this Work is established as XX calendar days from Substantial Completion to Project Final Completion.

IV. Enumeration of GMP Amendment Exhibits/Attachments

Work shall be in conformance with the Contract Documents and the Agreement. Attachments to this Amendment may include all or some of the following (depending on size and scope of project), which further delineate and itemize pertinent elements of the GMP and the associated project Scope of Work. Attachments are required at the time noted on each Attachment.

- Attachment 1 Summary of Cost by Division/Trade Package
- Attachment 2 General Requirements and General Conditions Cost Itemization, including Labor Burden
- Attachment 3 Detailed Scope of Work, and Assumptions, Clarifications and Cost of Work Exclusions.
- Attachment 4 Allowances by Trade- including unit prices and quantity amounts
- Attachment 5 Salvage Materials
- Attachment 6 Milestone Delivery Schedule (w/ summary milestone delivery items)

- Attachment 7 CPM Schedule- Itemized Breakdown (Resource Loaded as may be required by the Owner's Project Representative)
- Attachment 8 Payment and Performance Bonds
- Attachment 9 CM Insurance Provider Affidavit, Bond & Insurance Rate and Cost
- Attachment 10 Project Submittal Schedule (summary of required submittal items and submittal dates)
- Attachment 11 Schedule of List of Drawings Signed/Dated by Architect/Engineer of Record and CM
- Attachment 12 Schedule/List of RFI/ASI's
- Attachment 13 CM List of Sub-contractors and suppliers with License Numbers
- Attachment 14 CM Affidavit, Attesting to Subcontractor/Vendor Licensure Verification
- Attachment 15 The Construction Manager's Bidder/Vendor Report
- Attachment 16 The School District of Osceola County, FL Permit Application

However, the parties specifically acknowledge that the terms and conditions in the Agreement shall not be amended by Attachments 1 through 16 of GMP Amendment Exhibit B, unless otherwise expressly agreed-upon by the parties in writing. If the contents and language of the Attachments conflict, or are in any way inconsistent, with the language and provisions in this Agreement, then the conflicting and inconsistent language is of no effect and the terms and conditions of this Agreement prevail.

V. Liquidated Damages

Time is of the essence in the performance of the Work under the Contract Documents. The Owner and Construction Manager agree that the losses suffered by Owner, if Substantial Completion of the Work is not achieved, are not reasonably ascertainable at this time. Construction Manager acknowledges and agrees that, since time is of the essence, the Owner will suffer financial and other losses if Substantial Completion of the Work is not achieved within the Contract Time, as said Contract Time may be adjusted pursuant to the terms of the Contract Documents. Should the Construction Manager fail to achieve Certificate of Substantial Completion of the Work within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of \$TBD for each calendar day thereafter until Substantial Completion is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above-noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Construction Manager fails to achieve Substantial Completion of the Work within the Contract Time. Further, the parties acknowledge that it would be extremely difficult, if not impossible, to ascertain Owner's actual damages with any degree of certainty in the event Construction Manager fails to achieve Substantial Completion of the Work within the Contract Time.

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VI. Signature

IN WITNESS WHEREOF, the above parties have executed this instrument by their undersigned representatives pursuant to the authority of their governing bodies as of the approval date set forth in this Agreement.

OWNER:
The School Board of Osceola County, Florida

By: _____
Ricky Booth, Chair

Date Approved: _____

CONSTRUCTION MANAGER:
[FIRM]

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:
By: _____
Dr. Debra Pace, Superintendent

ATTEST:
By: _____
Print Name: _____
Title: _____

PRINCIPAL/DEPT. HEAD SIGNATURE:

By: _____

Print Name: Mark Lockard

Print Title: Director of Design and Construction

Date: _____

YEAR	FND	CNTR	PROJECT	FUNC	OBJT	PRG	S	AMOUNT
								NTE

Send required insurance certificates to the Purchasing Department.
New Vendors: Send completed Vendor Certification, W-9, and Vendor Information Forms to Accounts Payable Department.

Construction Manager Contact Name: _____
Email Address: _____
Phone Number: _____
Fax Number: _____

The School District of Osceola County, Florida

Exhibit B

Attachment 1 - GMP Summary of Cost by Division/Trade Package

The Construction Manager shall provide a list of all intended subcontractors and their suppliers, vendors, and material men for consideration as Owner-Purchased Materials. This list shall be submitted with the preliminary Schedule of Values.

The backup documentation and/or detailed breakdown for items listed as _____ on the attached GMP Summary of Costs shall be furnished to the Owner within **ten (10) days** after the complete execution of this GMP Amendment.

At the time of GMP, the Construction Manager shall identify all of its subcontractors that have included bonds with their proposal.

As per Article 3, paragraph 3.7.8 of the Agreement- Buyout Savings, "The tracking and reporting of Buyout Savings to the Owner's Project Representative is the responsibility of the Construction Manager. After the GMP has been "bought out", the Construction Manager is required to provide in writing, and in a format deemed suitable by the Owner's Project Representative, a reconciliation of the referenced savings by individual trade or subcontractor contract." The tracking of savings is the responsibility of the Construction Manager. The Owner's Project Representative shall review and approve the Buyout Savings reported, and the Construction Manager shall be required to modify the Schedule of Values to include a "Buyout Savings" line item. Prior to the use of Buyout Savings, the Construction Manager must submit a request, signed by the Architect, to the Owner's Project Representative for approval. All remaining Buyout Savings shall be returned to the Owner as Project Savings and shall exclude the Construction Manager's Fee applied at time of GMP.

As per Article 15, paragraph 15.29 of the Agreement- Background Check, "The Construction Manager shall require each of the Construction Manager's subconsultants, separate consultants, and subcontractors on the Project to agree, in writing, to the provisions of this paragraph. The Construction Manager shall provide these written agreements to the Owner's Project Representative within five (5) days after the complete execution of each GMP Amendment."

The School District of Osceola County, Florida

Exhibit B

Attachment 2 – GMP General Requirements and General Conditions Cost Itemization, including Labor Burden

The amounts included in the GMP for General Requirements and General Conditions are considered not-to-exceed, fixed amounts. General Requirements and General Conditions are not to be considered a lump sum amount and are auditable. The GMP must include a certified statement that the labor costs represent those amounts that are actually paid to the persons that are to be working on the Project. Provide the labor burden for each of the submitted staffing, in accordance with Paragraph 3.7.3(p)(iii) of the Agreement. At the time of application for payment submission, and in accordance with paragraph 3.16 of the Agreement, the Construction Manager must provide backup supporting the General Requirements and General Conditions expended. No General Requirements or General Conditions line item can result in costs to the Project that are unreasonable and not cost effective.

The Construction Manager shall have one (1) representative on staff and one (1) representative from their site contractor to be certified as a Florida Storm-water Inspector. The Construction Manager must provide the inspector’s certifications with this Attachment 2.

Labor Burden is defined as a fixed percentage of Construction Manager’s direct labor costs and is not subject to audit. The Labor Burden Rate for this Project is agreed to by the Construction Manager and Owner as _____%.

The Construction Manager’s compensation for General Conditions, listed in detail in this Attachment 2, shall be an amount that shall not exceed \$_____.

The Construction Manager’s compensation for General Requirements, listed in detail in this Attachment 2, shall be an amount that shall not exceed \$_____.

The School District of Osceola County, Florida

Exhibit B

Attachment 3 - GMP Scope of Work, and Assumptions, Clarifications and Cost of Work Exclusions

Construction Manager must provide a detailed Scope of Work along with any Assumptions, Clarifications and Cost of Work Exclusions.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 4 – GMP Allowances by Trade- including unit prices and quantity amounts.

Construction Manager must provide a detailed list and description of Allowances.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 5 – Salvage Materials

Salvage materials shall be the property of the Owner and stored or removed from the site by the Construction Manager at the direction of the Owner's Project Representative. All items proposed to be demolished and scrapped, and all items proposed to be demolished for reuse by subcontractors, as part of the GMP, shall be noted as such in the GMP proposal by the Construction Manager, along with the projected salvage value.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 6 – Milestone Delivery Schedule

The Construction Manager must provide a detailed Milestone Delivery Schedule with summary milestone delivery items.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 7 – CPM Schedule- Itemized Breakdown.

The CPM Schedule shall be Resource Loaded if requested by the Owner's Project Representative and shall be provided at time of submission of the GMP.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 8 – Payment and Performance Bonds

Within ten (10) business days after this GMP Amendment is agreed to by Owner and Construction Manager, Construction Manager shall provide the Owner's Project Representative with Payment and Performance Bonds, after recordation in the Public Records of Osceola County, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Construction Manager. Construction Manager shall not commence construction of the Work on the Project prior to delivery of the recorded bonds to Owner's Project Representative in the form of Exhibits A and B to this Attachment 8.

DRAFT

ATTACHMENT 8- EXHIBIT A

FORM OF PAYMENT BOND

BOND NO. _____

PUBLIC PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That _____
as Principal, located at _____ (Business Address and Telephone
Number), and _____, as Surety, located at
_____ (Business Address and Telephone Number), are held and
firmly bound to _____, as Obligee, located at _____
(Business Address and Telephone Number) in the sum of (\$ _____) for the payment of
which we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly
and severally.

WHEREAS, Principal has entered into an Agreement for Construction, Contract Number: (C-
_____) dated as of the ____ day of _____, 20__, with Obligee for the construction of:
_____ located at _____, Florida _____
in accordance with drawings and specifications, which contract is incorporated by reference and made a
part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payment to all claimants as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, services, materials or supplies, used directly or indirectly by Principal in the prosecution of the Work provided for in the Contract; and
2. Pays Obligee any and all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Contract; then this Bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.

Any action instituted by a claimant under this Bond must be in accordance with the notice and time provisions in Sections 255.05(2) and 255.05(10), Florida Statutes. In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Bond, regardless of the number of suits that may be filed by claimants.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 20__, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

Witnesses as to Principal

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

PRINCIPAL:

By: _____
Name: _____
Title: _____

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

ATTEST:

Witnesses as to Surety

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

(Printed Name)

OR

Witnesses

As Attorney in Fact
(Attach Power of Attorney)

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _
_____, as _____, of _____
_____, Surety, on behalf of Surety. He/She is personally known to me **OR** has
produced _____ as identification.

My Commission Expires:

Notary Public (Signature)

(AFFIX NOTARY SEAL)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

ATTACHMENT 8- EXHIBIT B

FORM OF PERFORMANCE BOND

BOND NO. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That _____
as Principal, located at _____ (Business
Address and Telephone Number) and _____, as
Surety, located at _____ (Business Address
and Telephone Number), are held and firmly bound to _____, as
Obligee, located at _____ (Business Address and
Telephone Number), in the sum of _____
(\$ _____) for the payment of which we bind ourselves, our heirs, executors,
personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into an Agreement for Construction, Contract Number: **(C-**
_____) dated as of the ____ day of _____, 20__, with Obligee for the
construction of: _____ located at _____,
Florida _____
in accordance with drawings and specifications, which contract is incorporated by reference and
made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract;
and
2. Pays Obligee any and all losses, damages, expenses, costs, and attorneys' fees,
including appellate proceedings, that Obligee sustains because of any default by
Principal under the Contract, including, but not limited to, all delay damages,
whether liquidated or actual, incurred by Obligee; and
3. Performs the guarantee of all Work and materials furnished under the Contract for
the time specified in the Contract; then this Bond is void; otherwise it remains in
full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities
connected with the Contract or the changes do not affect Surety's obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of
time, alterations or additions to the terms of the Contract or other Work to be performed
hereunder, or the specifications referred to therein shall in anyway affect its obligations under this
Bond, and it does hereby waive notice of any such changes, extensions of time, alterations or
additions to the terms of the Contract or to the Work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly
understood that the notice and time limitation provisions in Sections 255.05(2) and 255.05(10),

Florida Statutes, shall not apply to this Bond, but instead shall be governed by Section 95.11, Florida Statutes.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Bond regardless of the number of suits that may be filed by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.
Signed, sealed and delivered
in the presence of:

Witnesses as to Principal

STATE OF _____
COUNTY OF _____

PRINCIPAL:

By: _____
Name: _____
Title: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

Notary Public (Signature)

(AFFIX NOTARY SEAL)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

ATTEST:

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

Witnesses as to Surety

RFQ# SDOC-_____
[PROJECT NAME]
[FIRM NAME]

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

(Business Address)

(Printed Name)

(Telephone Number)

Witnesses

The School District of Osceola County, Florida

Exhibit B

Attachment 9- CM Insurance Provider Affidavit, Bond & Insurance Rate and Cost.

At time of submission of the GMP, the Construction Manager shall provide descriptions of formulas used to allocate the cost to the Project as well as third party evidence for the rates used or unit prices in the allocation. Certificates of insurance and copies of all policies, as required by the Owner, shall also be furnished to the Owner's Project Representative at time of submission of the GMP by the Construction Manager. All insurances are to be considered reimbursable line items and may only be paid if accompanied with the appropriate backup.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 10 – Project Submittal Schedule (summary of required submittal items and dates)

If not provided at the time of submission of the GMP, the Project Submittal Schedule shall be furnished to the Owner's Project Representative within ten (10) days after the complete execution of this GMP Amendment. The Project Submittal Schedule shall be provided in a format approved by the Owner's Project Representative and must include the list of all submittals required for the Project.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 11 – Schedule List of Drawings Signed and Dated by the Architect/Engineer of Record and Construction Manager.

The Schedule List of Drawings must be signed and dated by the Architect/Engineer of Record and the Construction Manager at the time of submission of the GMP. In addition, the Architect/Engineer of Record and Construction Manager must initial each page.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 12 – Schedule/List of RFI/ASI's asked and answered during Bid Portion of the Work that is included in the Cost of the Work.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 13 – CM List of Subcontractors and Suppliers with License Numbers

If not provided at the time of submission of the GMP, a list of subcontractors and suppliers, with license numbers, business address and business phone number, shall be furnished to the Owner's Project Representative within ten (10) days after the complete execution of this GMP Amendment.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 14 – CM Affidavit, Attesting to Subcontractor/Vendor Licensure Verification

If not provided at the time of submission of the GMP, the Construction Manager's Affidavit, Attesting to Subcontractor/Vendor Licensure Verification shall be furnished to the Owner's Project Representative within ten (10) business days after the complete execution of this GMP Amendment.

DRAFT

The School District of Osceola County, Florida

Exhibit B

Attachment 15 – The Construction Manager's Bidder/Vendor Report

Construction Manager's Bidder/Vendor Report shall be provided at the time the GMP is submitted to the Owner's Project Representative. The Report shall be updated and provided to the Owner's Project Representative within five (5) days after the complete execution of this GMP Amendment. The Report shall identify the subcontractors that the Construction Manager intends to enroll in its subguard program. Subguard insurance for self-performed or Related Firm work will not be reimbursed by the Owner.

The Construction Manager shall require each of Construction Manager's subconsultants, separate consultants, and subcontractors on the Project to agree, in writing, to the provisions of Article 15.29. The Construction Manager shall provide these written agreements to the Owner's Project Representative within five (5) days after the complete execution of this GMP Amendment.

Construction Manager shall update the Construction Manager's Bidder/Vendor Report as required by the Owner's Project Representative during the construction process and shall submit a final report at Substantial Completion.

The School District of Osceola County, Florida

Exhibit B

Attachment 16 – School District of Osceola County Permit Application

Pursuant to Florida Building Code 105.3, the Construction Manager shall submit a permit application that complies with Section 713.135, Florida Statutes, and is in the format prescribed by Fla. Admin. Code R. 6A-2.0010. A copy of the Owner's **Permit Application Form** (Office of Educational Facilities- OEF 220) and **Power of Attorney Permit Pick Up and Authorization Form** may be obtained from the School District's Building Department by calling 407-518-5418. Within five (5) days after execution of this GMP Amendment, the Construction Manager shall provide the Building Department with a completed permit application.

DRAFT

The School District of Osceola County, Florida

Exhibit C

Owner Direct Material/Equipment Purchase Program

1. The Subcontractor has included Florida State Sales and other applicable taxes in his bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Subcontractor's bid and/or contract, substantially in accordance with the Purchase Order Requisition Form.

Any equipment, materials or supplies directly purchased by the Owner that are included in the Subcontractor's contract shall be referred to as Owner-Purchased Materials and the responsibilities of both Owner and Subcontractor relating to such Owner-Purchased Materials shall be governed by the terms and conditions of these procedures. The Owner will own and hold full title to all Owner-Purchased Materials.

2. Material suppliers shall be selected by the Subcontractor awarded the subcontract.
3. The Subcontractor has included the price for all construction materials in his bid. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis.
4. Subcontractor shall provide Construction Manager a list of all intended suppliers, vendors, and material men for consideration as Owner-Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities, and prices.
5. Upon request from Construction Manager, and in a timely manner, Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the Owner's Project Representative and the Construction Manager, to specifically identify the materials which the Owner had, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:
 - A. The name, address, telephone number and contact person for the material supplier.
 - B. Manufacturer or brand, model or specification number of the item.
 - C. Quantity needed as estimated by the Subcontractor.
 - D. The price quoted by the supplier for the materials identified therein.
 - E. Any sales tax associated, with such quote.
 - F. Delivery dates as established by Subcontractor.
Subcontractor shall include reference to any terms and conditions which have been negotiated with the vendors; i.e., payment terms, warranties, retainage, etc.

Such Purchase Order Requisition Forms are to be submitted to Construction Manager's designated representative no less than fifteen (15) days prior to the need for ordering such Owner-Purchased Materials, in order to provide sufficient time for the Owner's Project Representative to review and approve the Purchase Order Requisition Forms, and to ensure that such directly Purchased Materials may be directly purchased by Owner and delivered to the Project site without any delay to the Project.

6. After receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Orders for equipment, materials or supplies, which the Owner chooses to purchase directly. Per Rule 12A-1.094 of the Florida Administrative Code, to be entitled to purchase materials tax exempt for the Project, the Owner is required to issue a Certificate of Entitlement to each vendor and to the Construction Manager to affirm that the tangible personal property purchased from that vendor will go into or become a part of the Work. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, Subcontractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. Owners Purchasing Director or his designated representative shall be the approving authority for the Owner on Purchase Orders in conjunction with Owner-Purchased Materials. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the Owner-Purchased Materials on the delivery dates provided by the Subcontractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite.
7. In conjunction with the execution of the Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the Owner, through the Construction Manager, one or more deductive Change Order, referencing the full value of all Owner-Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in Subcontractor's bid to Construction Manager.
8. All shop drawings and submittals shall be made by the Subcontractor in accordance with the Project Specifications.
9. Subcontractor shall be fully responsible for all matters relating to the receipt of materials furnished by Owner in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss, or damage to equipment and materials following acceptance of items by the Owner due to the negligence of the Subcontractor. The Subcontractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Subcontractor for the particular materials furnished. The Subcontractor agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Subcontractor. Owner purchased materials shall be stored at the construction site.
10. As Owner-Purchased Materials are delivered to the jobsite, the Subcontractor and the Construction Manager, as Owner's Representative, shall visually inspect all shipments

from the suppliers, and approve the vendor's invoice of material delivered. The Subcontractor shall assure that each delivery of Owner-Purchased Materials is accompanied by adequate information and documentation to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's Representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The Subcontractor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Finance Department for processing and payment in the manner as all other Osceola School District invoices are processed. The Owner shall have the right to assign personnel to verify and audit the accuracy of all Direct Purchase Documents.

11. The Subcontractor shall insure that Owner-Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Subcontractor discovers defects or non-conformities in the Owner-Purchased Materials upon such visual inspection, the Subcontractor shall not utilize such non-conforming or defective materials in the Work and instead shall promptly notify the vendor of the defective or non-conforming condition of the materials in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the Owner, through the Construction Manager, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporates Owner-Purchased Materials, the defective or non-conforming condition of which it either knew or should have known by performance of an inspection, Subcontractor shall be responsible for all damages to County resulting from Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or non-conforming, the Subcontractor shall promptly take action to remedy the defect or non-conformance so as not to delay the Work.
12. The Subcontractor shall maintain records of all Owner-Purchased Materials it incorporates into the Work from the stock of Owner-Purchased Materials in its possession. The Subcontractor shall account monthly to the Owner, through the Construction Manager, for any Owner-Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials which have been incorporated into the Work.
13. The Subcontractor, as the Owner's agent, shall be responsible for obtaining and managing all warranties and guarantees for all material and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
14. Notwithstanding the transfer of Owner-Purchased Materials by the Owner to the Subcontractor's possession, the Owner shall retain title to any and all Owner-Purchased Materials.
15. The transfer of possession of Owner-Purchased Materials from the Owner to the Subcontractor shall constitute a bailment for the mutual benefit of the Owner and the Subcontractor. The Owner shall be considered the bailor and the Subcontractor the bailee of the Owner-Purchased Materials. Owner-Purchased Materials shall be considered returned to the Owner for the purposes of its bailment at such time as they are

incorporated into the Project or consumed in the process of completing the Project. All Owner-Purchased Materials shall be stored at the construction site.

16. The insurance purchased and maintained by the Construction Manager shall be sufficient to protect against any loss of or damage to Owner-Purchased Equipment, Materials or Supplies. Such insurance shall cover the full value of any Owner-Purchased Materials not yet incorporated into the Project from the time the Owner first takes title. The Owner shall be named as an Additional Insured Party on such policies of insurance. The Owner will bear the costs of all Payment and Performance Bonds and Owner's Insurance including Builder's Risk Insurance as a reimbursable expense to the Construction Manager. The Owner shall be named as an additional named insured on the Contractor's Builder's Risk Insurance and, in the event of damage or destruction to the Owner-Purchased Materials, the Owner will receive all proceeds derived from all claims against insurers or others to pay for repair or reconstruction as a result of damage or destruction.
17. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner-Purchased Materials when such delay is a result of the failure of the Subcontractor's performance.
18. On a monthly basis, Subcontractor shall be required to review invoices submitted by all suppliers of Owner-Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon Subcontractor's records of material delivered to the site and any defects or non-conformities in such materials.
19. In order to arrange for the prompt payment to the supplier, the Subcontractor shall provide to the Owner, through the Construction Manager, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered, and remitted directly to the supplier. The Subcontractor agrees to assist the Owner to immediately obtain a partial or final release of lien waiver as appropriate.
20. The Owner's direct purchase of equipment, materials or supplies, as provided herein does not relieve the Construction Manager or any Subcontractor of any obligation required pursuant to the contract or subcontract pertaining to the performance of Work, except as to the Owner's obligation to make direct payments to such vendors and may reduce the bonds to the extent permitted by Section 255.05, Florida Statutes.
21. The items being purchased shall be purchased from the vendors and suppliers selected by the Construction Manager and/or the subcontractor for prices negotiated by the Construction Manager and/or subcontractor.
22. The Construction Manager is responsible for establishing an accounting system that will adequately track and monitor the direct purchases made by the Owner. The determination of the adequacy of the accounting system shall be mutually agreed upon between the Construction Manager and the Owner. The system developed by the Construction

Manager shall track and monitor materials purchased (and shall adequately identify the same), costs, tax savings, and such other charts of accounts or information as may be reasonably requested by the Owner. The Construction Manager shall submit a monthly accounting report of this information with the Construction Manager's application for payment.

23. The Construction Manager shall provide all rough drafts of purchase orders to the Owner for processing in such time and sequence that the Work will not be impeded or delayed in any manner. Notwithstanding anything in this Article 14 to the contrary, the Construction Manager remains fully responsible under its Agreement with the Owner, and the implementation of this direct purchase program shall not be used in any manner by the Construction Manager to justify any delay unless such delay is a direct result of the Owner's failure to comply with the terms of the Owner Direct Material/Equipment Purchase Program through no fault of the Construction Manager. Should a delay be incurred that is not the result of the Owner's failure, as stated above, the Construction Manager shall be held accountable for such a delay. The Construction Manager, for \$10.00 and other valuable consideration, the adequacy of receipt of which is hereby acknowledged and deemed to be sufficient, does hereby release, waive and hold harmless the Owner from and against any claim for damages, acceleration damages, or any other matter, claim or damage that may arise from or be related to in any way the Owner's Direct Purchase Program to the extent stated herein.
24. The Construction Manager shall be responsible for all purchases in the same manner as if the Construction Manager had purchased the items, inclusive of managing the warranties for the Owner. The Construction Manager shall cooperate with the Owner and take all action necessary to assure that all warranties with respect to any materials or equipment which may be available from any vendor are passed-through to the Owner.
25. Modification of the Contract Sum will be made by one (1) change order (or additional change orders in the sole discretion of the Owner) prior to final payment unless the Agreement period crosses the Owner's fiscal year, in which case, one (1) change order will occur for each fiscal year, one prior to the close of the first year, and the other during the second fiscal year.

The School District of Osceola County, Florida

Exhibit D

Truth-In-Negotiation Certificate

The wage rates and other factual unit costs supporting the compensation under the Agreement between the School Board of Osceola County, Florida and _____, dated _____, are accurate, complete and current as of the time of entering into the Agreement. This Certificate is executed in Compliance with Section 287.055 (5) (a) of the Florida Statutes.

DATED this _____ day of _____ 20_____.

By:

STATE OF FLORIDA)

) ss:

COUNTY OF _____)

BEFORE ME, the undersigned authority personally appeared _____ as its _____, who, after first being duly sworn, deposes and says that the foregoing Truth In Negotiation Certificate is true and correct to the best of his/ her knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____, by _____ (type/print name of affiant).

Notary Public (printed name)

Personally known to me _____; or has produced identification

Type of identification produced: _____