

OWNER/CONSTRUCTION MANAGER-AT-RISK
STANDARD FORM CONTRACT

(WHERE THE CONTRACT PRICE IS A GUARANTEED MAXIMUM)

PROJECT # _____

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OWNER/CONSTRUCTION MANAGER-AT-RISK

(WHERE THE CONTRACT PRICE IS A GUARANTEED MAXIMUM)

STANDARD FORM CONTRACT

for Project # _____ at

(Description)

This contract (the "Contract") is made and entered into by and between THE SCHOOL BOARD OF POLK COUNTY, FLORIDA ("Owner"), a statutory corporation, whose mailing address is Post Office Box 391, Bartow, FL 33831, and _____ ("Construction Manager") a _____ (Form of Entity) duly operating and existing under the laws of the State of Florida.

For and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Construction Manager agree as follows:

ARTICLE I

DEFINITIONS

- 1.1** Allowance: Allowance is defined as a line item in a GMP proposal that is an estimated cost for that scope of work as determined by the Construction Manager and is agreed to by the Owner. Before the work is performed the scope is to be competitively bid and awarded to the lowest and best bidder. A minimum of three bids are required, or four bids are required where the Construction Manager is a bidder on that scope of work. Any bid amount above the allowance shall be borne by the Construction Manager, any bid amount less than the allowance shall be credited the Owner.
- 1.2** “Applicable Laws” means all laws, statutes, ordinances, codes, building codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.
- 1.3** Architect: The Architect as used herein refers to the person, firm or corporation with whom a Contract has been entered with the Owner, directly or through an authorized representative, for the performance of any work covered under the Contract Documents. _____ has been contracted to perform architectural services for Project Number _____.
- 1.4** “Change Order” means a written order to Construction Manager executed by the Owner in accordance with the contract authorizing and directing an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Construction Manager, or to the time for performance of the contract and completion of the Project, or any combination thereof.
- 1.5** Contract Documents: The Contract Documents consist of the Contract, Form of Proposal, Instructions to Bidders, General Conditions, Special Conditions, Plans and Specifications, Addendums, Bond, Contract, any supplemental conditions, change orders, any written amendments to this Contract and all other documents signed by both parties that govern the parties’ conduct related to the Project.
- 1.6** “Construction Manager-at-Risk” (C.M.) means the firm or corporation with whom a Contract has been entered into with the Owner for the performance of any work covered under the Contract Documents. The term “Contractor” or “Construction Manager”, when used in these documents, refers to the Construction Manager-at-Risk.
- 1.7** “Construction Phase” means the phase of the Project commencing upon completion of the Design Phase and ending upon Architect's and Owner's Representative's execution of the Certificate of Final Completion of the Project.
- 1.8** “Construction Phase Services” means Services rendered during the Construction Phase of the Project.
- 1.9** “Day(s)” means calendar day unless specification stated otherwise.

- 1.10** “Final Completion” means the completion of all Work required by, and in strict compliance with, the Contract Documents, including start-up, testing, obtaining regulatory approvals from all applicable authorities, completion of all punch lists, and all preparations necessary to operate and maintain the Project.
- 1.11** “GMP” means the Guaranteed Maximum Price for the Project, as defined and subsequently established in paragraph 14.2, below.
- 1.12** “Other Contractors” means any contractor, but not including Construction Manager or the Subcontractors, with whom Owner enters into a direct contract for the performance of any portion of the Work.
- 1.13** Owner: The Owner as used herein shall mean the School Board of Polk County, Florida.
- 1.14** “Owner's Representative” means the individual named by Owner to act on Owner's behalf in the administration of this contract. Owner's Representative does not have authority to waive or modify any condition or term of the Contract Documents.
- 1.15** Preliminary Design” means all design documents constituting the Preliminary Design as required and defined in Owner's contract with Architect.
- 1.16** “Project” means the work as defined in the Contract Documents.
- 1.17** “Services” means those services, functions, roles, responsibilities, obligations and duties required of Construction Manager pursuant to the terms of the Contract Documents.
- 1.18** Reimbursable amounts expended for or on account of the project which, in accordance with the terms of the contract, are to be reimbursed by the Owner. Items that the Owner will pay as a direct cost to the onsite construction project not related to the cost of the work and excluding Construction Manager's off-site office personnel, office expenses, capital and interest cost/expenses.
- 1.19** “Subcontracts” means the contracts between Construction Manager and any Subcontractor.
- 1.20** “Subcontract Costs” means those sums properly paid or due and payable by Construction Manager under the terms of the Subcontracts.
- 1.21** SubContractors: The subcontractors as used herein refers to all persons, firms or corporations furnishing labor or materials in privity with or under the supervision of the Contractor or Construction Manager.
- 1.22** Substantial Completion” means that stage of completion of the Project, including testing, approval by any applicable regulatory authority, and receipt of the final certificate of occupancy, such that the Work and the Project are usable by Owner for the purpose for which they are intended.

- 1.23 Superintendent:** The Superintendent as used herein refers to the executive representative of the Construction Manager who shall be present on the site at all times during progress of the work and shall be authorized to receive and fulfill instructions from the Owner, and capable of properly supervising the work.
- 1.24 Surety:** The SURETY as used herein shall mean the person, firm, or corporation bound by the Contract with and for the Construction Manager and responsible for the Construction Manager's acceptable performance of the work and for payment of all debts pertaining thereto.
- 1.25 "Value Engineering"** means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality and safety. "Life Cycle Cost" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance, and salvage/resale value.
- 1.26 Work:** The Work as used herein means the labor and materials furnished by the Contractor or Design Builder or Construction Manager or SubContractor.

ARTICLE 2

THE CONTRACT DOCUMENTS

- 2.1 Contract Documents Defined.** The contract between the parties shall consist of the "Contract Documents." The Contract Documents are defined in Article 1.4.
- 2.2 Priority of Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the Construction Manager shall immediately notify the Owner and Architect of any such conflict, discrepancy or inconsistency. In the event the parties cannot agree to a resolution of the problem with interpreting the documents, the interpretation will be based on the following descending order of priority:
- (a) This Contract.
 - (b) Supplemental or Special Conditions (if any).
 - (c) Specifications.
 - (d) Plans, and among the Plans, the following:
 - (e) As between figures given on plans and scaled measurements, the figures shall govern.
 - (f) As between large-scale plans and small-scale plans, the large-scale plans shall govern.
- 2.3 Substitutions.** If Owner elects to accept any items initiated by Construction Manager as a substitution, Construction Manager shall assume full responsibility for the proper performance of such substituted items and shall assume the costs of any

changes in the Work which may be due to such substitution.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

- 3.1 Specific Representations and Warranties.** By executing this Contract, Construction Manager makes the following express representations and warranties to Owner:
- 3.1.1** Construction Manager is professionally qualified to act as the Construction Manager for the Project and has, and shall maintain, any and all licenses, permits, insurance and other authorizations necessary to act as the Construction Manager for the Project and to perform the Services required hereunder. The above qualification includes a state certification of the Construction Management firm as a General Contractor or a Building Contractor.
 - 3.1.2** Construction Manager has become familiar with all design and construction documents generated to date and will become familiar with all generated hereafter, and has become familiar with the Project site and the local conditions under which the Project is to be constructed.
 - 3.1.3** Construction Manager has the capability and experience, including sufficient qualified and competent supervisory personnel, to efficiently and timely accomplish the Work and perform the Services, and Construction Manager will continuously furnish sufficient personnel to accomplish the Work and perform the Services in a timely and proper manner.
 - 3.1.4** Construction Manager shall comply, and shall cause all Subcontractors to comply, with all Applicable Laws.
 - 3.1.5** Construction Manager assumes full responsibility to Owner for the acts and omissions of its officers, employees, Subcontractors, consultants, and others employed or retained by it or them in connection with the performance of the Services or the Work.
 - 3.1.6** Construction Manager warrants to Owner that all labor furnished to perform the Work under the Contract Documents will be competent to perform the tasks undertaken, that materials and equipment furnished will be of good quality and new unless otherwise permitted by the Contract Documents, and that the Work will be of good quality free from faults and defects, and in strict conformance with the Contract Documents.
 - 3.1.7** All obligations related to or arising from all representations and warranties made in the Contract Documents shall be obligations of, and shall be deemed incorporated in, the performance bond furnished by Construction Manager.
- 3.2 Enumerated Representations and Warranties not Exhaustive.** The representations and warranties enumerated in this Article operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by the Contract

ARTICLE 4

CONSTRUCTION MANAGER'S SERVICES AND DUTIES: GENERAL PROVISIONS

- 4.1 Generally.** Construction Manager shall perform and provide the Services and the Work required by the Contract documents, shall be responsible for the construction of the Project in conformance with the requirements of the Contract Documents, and shall pay all subcontractors and/or vendors (within 7 days of receipt of payment) for labor, supervision, materials, supplies, furnishings, equipment and things required by the Contract Documents. In performing its duties hereunder, Construction Manager shall be a fiduciary to the Owner in whom the Owner may place its full trust and confidence.
- 4.2 Standard of Care.** Construction Manager shall perform the Services at a level, and be judged by a standard of care, that is consistent with the standards and quality prevailing among construction management and general contracting firms of superior knowledge, skill and experience engaged in projects of similar size and complexity. Construction Manager shall carry out and complete the Services in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby and the interests of Owner, and in accordance with the Contract Documents.
- 4.3 Permits, Notices, and Fees.** All permits and fees in connection with water management districts, the Florida Department of Transportation, the Florida Department of Health and Rehabilitative Services, and the Florida Department of Environmental Protection will be the responsibility of and at the expense of the Owner unless otherwise specifically provided in the Contract Documents. Construction Manager shall obtain or cause Subcontractors to obtain all other required permits associated with the Work, the cost of which shall be part of the GMP.
- 4.4 Compliance with Applicable Laws.** Construction Manager shall reasonably ensure that the Services and Work are performed, and the Project is constructed, in a manner which meets the requirements of all Applicable Laws relating to the construction, occupation, and operation of the Project, including, but not limited to, building codes, fire and safety regulations, and environmental regulations. Such Applicable Laws shall be deemed minimum standards for the Project. Where the requirements of the specifications and the accompanying plans exceed those of the Applicable Laws, the plans and specifications shall be followed. Construction Manager shall immediately report to Owner's Representative in writing any known or anticipated violation by Architect or any Subcontractor of any Applicable Law.
- 4.5 Reporting Anticipated Delays.** The C.M. is responsible for assuring that the Contract will be completed on a timely basis. No extension of time will be granted for rain delay as normal rain days are figured into the contract schedule unless the delay is caused by acts of the Owner as stated in Article Fifteen or by unusual and unforeseeable "Acts of God" that are beyond the Construction Manager's control (e.g. unusually severe and prolonged bad weather) that makes it impossible to proceed with any of the work. In no event will problems with Subcontractors, suppliers or

employees entitle the C.M. to an extension of the contract. Compensation for delays caused by the Owner is recoverable only as described in Article Sixteen.

4.5.1 The C.M. shall within ten days from the beginning of such delay submit written notification to the Owner of the causes of the delay. If the C.M. fails to give such written notice, within ten days of the beginning of such delay no claim for extension will be considered. Oral notification of delays will not be sufficient. Notification of delay due to unusually severe and prolonged bad weather shall be documented by data substantiating that weather conditions were abnormal for the period of time and did adversely impact the construction schedule.

4.5.2 The Owner shall review such notification if an extension is requested by the C.M. and may extend the completion date if the Owner concludes that the facts justify such an extension.

4.5.3 Delays, which are excusable under the terms of this Contract, shall not excuse the Contractor or C.M. from timely completing portions of the Contract which are not materially affected by the delay.

4.6 Contiguous Work. The C.M. shall review and take into consideration all contiguous work to be performed by other parties arising from any causes whatsoever. The Owner shall not consider any delays in the Work caused by said contiguous work.

4.7 Duty to Correct. Construction Manager shall promptly correct any errors, omissions, deficiencies, or conflicts in its Services and the Work at its own cost and without additional compensation or reimbursement, and Construction Manager shall not be compensated or reimbursed for performing any Services necessitated by its failure to perform in accordance with the Contract Documents.

ARTICLE 5

DESIGN REVIEW AND PROJECT PLANNING

5.1 Generally. During the Construction Phase where necessary or appropriate to further the interests of Owner and the Project, Construction Manager shall render Services which support the services to be rendered by Architect, Project planning, and the specific Services described in this Article.

5.2 Review Project Requirements and Site Data. Construction Manager shall review and study all background data, plans and specifications and other related materials made available by Owner as to requirements, criteria, priorities, feasibility, and physical and financial limitations with regard to the Project, and shall review with Owner's Representative and Architect site data, such as access, location of services and utilities, security, surveys, and soils information, and other relevant information.

5.3 Verify Site and Working Conditions. Promptly after execution of this Contract, and as necessary thereafter, Construction Manager shall visit the Project site, review all information related to the site and to the conditions under which the Work will be performed. Construction Manager shall notify Owner's Representative in writing of any conditions that would adversely affect the progress, quality, or cost of the Work, recommend means of addressing such conditions, and suggest additional testing or

services reasonably required in connection therewith.

- 5.4 Consultants.** Construction Manager shall assist Owner as needed in identifying consultants and professionals, to provide specialized services.
- 5.5 Identify Applicable Laws and Regulations.** Construction Manager shall identify and review with Owner's Representative and Architect, prior to bidding, any Applicable Laws which will affect the Services, the Work, and the Project.
- 5.6 Quality Assurance.** Construction Manager shall submit to Owner's Representative and Architect for approval a written quality assurance program for the Project within forty-five (45) days of being approved by the Board as Construction Manager.
- 5.7 Utilities, Communications and other Infrastructure Considerations.** Construction Manager shall advise and assist the Architect and represent the Owner, if requested, in dealing appropriately with local utilities, communications, and other related infrastructure issues.
- 5.8 Review of Contract Documents.** Construction Manager shall review, and study all design and construction documents prepared by Architect for accuracy, completeness, constructability, clarity, and consistency. Construction Manager shall notify Owner's Representative and Architect in writing of any errors, omissions, conflicts, Inconsistencies, or ambiguities discovered and identify potential design changes before the bidding cycle and construction phase begin, and recommend alternatives when design details affect construction feasibility, constructability, quality, or the Project schedule.
- 5.9 Consultation Regarding Design Modifications.** If Owner directs Architect to modify any design or construction documents, Construction Manager shall consult with Owner's Representative and Architect regarding the impact of such modifications on the then current Project cost estimate and the Project schedules and suggests means and methods of minimizing any adverse impact of such modifications.
- 5.10 Architect's Responsibility.** Construction Manager shall perform these services as described in this article with a view toward identifying and resolving problems. Construction Manager shall not bear any responsibility for errors, omissions, conflicts, inconsistencies or ambiguities in the work of the Architect or others, which may go, undetected. In all events, the Architect, and not the Construction Manager, shall remain fully responsible for its design and other services.

ARTICLE 6

ESTIMATING AND MONITORING PROJECT COSTS

- 6.1 Construction Cost Estimate.** Within twenty-five (25) days after the Owner's issuing of the Contract Documents, Construction Manager shall prepare an estimate (the 'Construction Cost Estimate') of the cost of constructing the Project in accordance with the requirements of the Contract Documents and shall provide same to Owner's Representative. The Construction Cost Estimate shall be broken down in such detail as Owner's Representative may require, and shall include a recommended contingency for each element of the Work.

- 6.2 Reducing Project Costs after Bidding.** If, prior to the establishment of the GMP, the lowest responsive bid for construction or supply of an element of the Work exceeds the sum indicated in the Construction Cost Estimate for that element of the Work, then Construction Manager, in cooperation with Owner as required, shall evaluate possible means on bringing the price to within the construction cost estimate. If these efforts are unsuccessful in obtaining pricing that is acceptable to the Owner, Construction Manager shall further evaluate that element of the Work. Owner may modify the Design for Construction in order to bring such price within a range acceptable to Owner, and Construction Manager shall assist in implementing any measures decided upon by Owner to achieve such savings.
- 6.3 Monitoring Construction Costs and Comparison to Estimates.** Throughout the duration of the Project, Construction Manager shall regularly review and study the actual and anticipated costs of constructing the Project and shall compare them to the Construction Cost Estimate and, once established, to the GMP. As part of the Monthly Reports required by paragraph 12.3 of this Contract, Construction Manager shall furnish to Owner's Representative a written analysis of the costs of the Work, including a comparison of the Construction Cost Estimate and the GMP with the actual costs for Work in progress, Work performed to date, and estimates for uncompleted Work.
- 6.4 Cash Flow Forecasts.** Construction Manager shall analyze the Design for Construction, schedules of values submitted by the Subcontractors, and the Construction Schedule and shall prepare a written forecast of projected monthly payments to Construction Manager through Substantial Completion of the Project. As a part of each Monthly Report, Construction Manager shall provide Owner's Representative with an updated forecast of such projected monthly payments.
- 6.5 Unit Cost Records.** For all Work for which Construction Manager is compensated on a unit cost basis, Construction Manager shall maintain up-to-date records of the number of units performed or supplied and shall notify Owner's Representative in writing as soon as it reasonably appears that any quantities estimated in the Contract Documents may be exceeded.

ARTICLE 7

COMMENCEMENT DATE, COMPLETION DATE AND SCHEDULES

- 7.1 Commencement and Completion Date.** The Commencement Date of this Contract will be on the fourteenth calendar day after the Contract is awarded by the Owner and will be substantially complete as quickly as possible not to exceed _____ (_____) consecutive calendar days, said substantial completion date being the _____ day of _____, 20.

The work to be performed under the Contract may begin prior to Commencement Date when authorized by the Owner after delivery by the Construction Manager and acceptance by the Owner of the signed Contract, bond, proof of insurance, cost breakdown and time schedule and the Owner has provided a Notice to Proceed. Construction Manager shall achieve Final Completion of the Work within _____ days after the Substantial Completion Date. Neither the Substantial Completion Date nor the time for Final Completion shall be changed except by Change Order issued in

accordance with the terms of this Contract. Provided however, that Owner, in its discretion, may negotiate to accept portions of a project at a time.

- 7.2 Preparation of Sixty-Day Schedule.** A detailed schedule for the first sixty days of the project shall be submitted to the Owner and the Architect on or prior to the Contract commencement date. An outline schedule for the remainder of the project shall be submitted at the same time taking into account Owner's desired Substantial Completion Date. Construction Manager shall provide to Owner's Representative, in a summary form, a proposed schedule for the completion of the Project including milestone dates appropriate to the Project but at a minimum including dates for, applicable permitting requirements, long lead time items to be acquired by Owner or others, site work, work by major trades, fabrication and installation of all systems, Substantial Completion of the Project, testing, and start-up (the "Preliminary Schedule"). The Preliminary Schedule shall be subject to Owner's approval. The Substantial Completion Date shall not be changed except by Change Order.
- 7.3 Preparation of Construction Schedule.** A detailed schedule for the entire Project shall be submitted to the Owner and the Architect no later than thirty days after the Contract commencement date. The Construction Manager's schedule shall not exceed the current completion time for the Project and shall be updated and revised as required by the conditions of the Project. The Construction Schedule shall be in such form as Owner may require, shall utilize the critical path method of scheduling, and shall conform to the established Substantial Completion Date. The Construction Schedule shall coordinate and sequence all activities and performance by all participants in the construction of the Project, including Owner, Construction Manager, Architect and Subcontractors. The Construction Schedule shall identify those activities and events, which are on the critical path.
- 7.4 Owner's Approval of Sixty Day and Construction Schedules.** Upon Owner's written approval of the Sixty Day Schedule and the Construction Schedule, Construction Manager may proceed in accordance therewith; however, OWNER'S APPROVAL OF ANY SCHEDULE SHALL ONLY INDICATE OWNER'S ACKNOWLEDGMENT OF THE DATES CONTAINED THEREIN AND SHALL NOT CONSTITUTE RATIFICATION OR APPROVAL OF THE ACCURACY, ADEQUACY, OR LOGIC OF SUCH SCHEDULES, OR OF THE MEANS, METHODS, MANNER OR SEQUENCE OF WORK CONTAINED IN SUCH SCHEDULES. Owner's approval of the Sixty Day Schedule or any Construction Schedule shall in no way diminish Construction Manager's duties to schedule and coordinate the Work, which shall remain Construction Manager's sole responsibility, and shall not diminish or excuse Construction Manager's duties to perform its Services in a manner so as to achieve timely completion of the Project. In no event shall updates to the Sixty Day Schedule or the Construction Schedule provided by Construction Manager, whether or not objected to or approved by Owner, constitute evidence of an adjustment in the Substantial Completion Date or Construction Manager's compensation hereunder.
- 7.5 Delays:** The Construction Manager is responsible for assuring that the Contract will be completed on a timely basis per Article 4.5.
- 7.6 Determination.** Actual damages to Owner for delay in completion are impractical of determination.

- 7.7 Liability.** The Construction Manager and the Surety shall be liable for and shall pay liquidated damages to the Owner for each calendar day of delay until the work is completed and accepted.
- 7.8 Monetary Loss.** The Construction Manager and the Surety further agree that it is not necessary for the Owner to prove monetary loss.
- 7.9 Stipulated Damages.** The Construction Manager and the Owner stipulate to liquidate damages, which shall be in addition to any other damages to which the Owner may be entitled as follows:

The Construction Manager shall pay the Owner a onetime sum of \$_____ plus the sum of \$_____ per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Also the Construction Manager shall pay the Owner a sum equal to 10% of the daily stipulated damages in this article per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the work. Any sums due and payable hereunder by the Construction Manager shall be payable in compliance with section 235.32, Florida Statutes as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner may withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

The Owner has the option to accept and enjoy beneficial use of portions of the work, which are substantially complete before the entire project is completed. In the event such partial acceptance occurs, liquidated damages will not be nullified or excused but will continue until substantial completion of the entire project.

Commencing on the date of partial acceptance and subject to the entire facility being complete to the extent of allowing the Owner to open school as scheduled the Owner shall reduce unaccumulated liquidated damages by a percentage which equals the ratio of the value of the accepted portion of the project to the total value of the entire project as determined by the schedule of values.

Nothing herein shall obligate the Owner to accept portions of the project prior to substantial completion of the entire project.

ARTICLE 8

PROCUREMENT OF SUBCONTRACTS, MATERIALS, AND SERVICES

- 8.1 Bidding and Contract Award.** Construction Manager shall provide all necessary Services related to the bidding of Subcontracts for the construction of the Project, including: (a) preparing lists of prospective bidders; (b) preparing appropriate bid

documents, work scopes including proposed forms of contract and purchase orders; (c) establishing bid schedules; (d) advertising for bids and developing bidder interest; (e) furnishing information concerning the Project to prospective bidders; (f) conducting pre-bid conferences and pre-qualifying subcontractors (g) receiving and analyzing bids and making recommendations to Owner regarding bid awards; (h) investigating the acceptability and responsibility of sub-subcontractors or suppliers proposed by any Subcontractor and advising Owner of such evaluations; (i) negotiating with Subcontractors concerning any matter related to the Project; and (j) such other services required by Owner with respect to the bidding process. Upon prior written approval by the Owner, the Construction Manager may bid portions of the Work they are qualified to perform in competition with other qualified Subcontractors.

8.2 Approval of Subcontractors. Construction Manager shall not subcontract for any part of the Services or Work with any Subcontractor or consultant (including affiliates and subsidiaries of Construction Manager) who is not properly licensed or against whom Owner has a reasonable objection. Construction Manager shall provide Owner's Representative with such written information as Owner deems necessary in order to determine whether to object to the Construction Manager's hiring of any Subcontractor or consultant, including proof of license. If no objection is interposed by the Owner within fifteen (15) days of its receipt of such information, Owner shall be deemed to have no such objection and Construction Manager may execute such Subcontract and shall furnish Owner a copy of same.

8.3 Subcontract Requirements. All Subcontracts shall afford Construction Manager rights against its Subcontractors which correspond to the rights afforded to Owner against Construction Manager herein, including those rights of contract suspension, termination, replacement of unsatisfactory personnel at Owner's request, and documentation of Subcontractor charges as set forth herein. Except as otherwise approved by Owner in writing, all Subcontracts shall provide for the retention of ten percent (10%) of amounts earned under the Subcontracts ("Subcontract Retainage"), and Owner shall not be responsible for releasing, paying, or compensating Construction Manager any amount on account of such Subcontract Retainage until such time as specified by this Contract for release of retainage.

8.4 Coordination of the Subcontracts. Neither Owner nor Architect assumes any responsibility for defining the limits on any Subcontracts on account of the arrangement of the specifications or plans. As part of the bidding and award of Subcontracts, Construction Manager shall ensure that the Subcontracts are coordinated so that all of the Work is properly and clearly allocated among, and assigned to, Construction Manager and Subcontractors without omission, conflict, or duplication. Construction Manager shall carefully review all Subcontracts to ensure: (a) that all subcontracted parts of the Work are assigned to appropriate Subcontractors; (b) that, unless provided for by Construction Manager, provisions are made for temporary facilities and utilities necessary for the performance of the Work and for Project site facilities necessary for Construction Manager, Owner, and Architect to perform their duties in the management, inspection, and supervision of the Work; (c) that responsibility for Project safety programs is properly assigned; (d) that they are in compliance with Applicable Laws; and (e) that they are in compliance with Owner's and Construction Managers' Guidelines, if any.

8.5 Competitive Procurement. Unless otherwise directed by Owner, Construction Manager shall use competitive procurement methods in conformance with Owner's procurement policies, if any, and with any rules and regulations of any governing authority who has jurisdiction over the Project. The Construction Manager is expected to produce a minimum of three (3) qualified bids for each category of the work where the Construction Manager is to perform in that scope of work the Construction Manager shall be the fourth bidder. The contract will be awarded on the basis of lowest and best bid, exceptions to this will be justified by the Construction Manager. Amounts less than Ten Thousand Dollars (\$10,000.00) may be faxed or sealed bids. The Construction Manager is to ensure that subcontractors do not subcontract their scope of work to another subcontractor, no sub to a sub is to be allowed except as required by law and/or licensure. Amounts greater than Ten Thousand Dollars (\$10,000.00) are to be sealed bids only. Construction Managers are required to provide the best field of bidders possible in each category and are encouraged to provide as many bidders as necessary in the larger fields of work to create the best possible competitive atmosphere for the Owner. Exhibit "B" is a sample of a Bid Proposal Log for the Construction Managers use. The GMP proposal shall be based on the actual low bid as written in the bid scope. Adjustments of bid amounts by the Construction Manager must be approved by the Owner and written into the GMP proposal as verification as such.

8.5.1 Allowance is defined as a line item in a GMP proposal that is an estimated cost for that scope of work as determined by the Construction Manager and is agreed to by the Owner. Before the work is performed the scope is to be competitively bid and awarded to the lowest and best bidder. A minimum of three bids are required or four bids are required where the Construction Manager is a bidder on that scope of work. Any bid amount above the allowance shall be borne by the Construction Manager, any bid amount less than the allowance shall be credited the Owner.

Not more than 5% of the total GMP shall be allowed as an allowance in a proposed GMP. In no case shall the major divisions be submitted in whole as an allowance. (As example: site-work, masonry roofing, plumbing, HVAC or electrical). The use of allowances in a GMP proposal is solely at desecration of the Owner. Every effort is to be made to present a GMP without allowances. Generally Division 10 is the only area where an allowance is acceptable without written approval by the Owner.

8.5.2 Reimbursable amounts expended for or on account of the project which, in accordance with the terms of the contract, are to be reimbursed by the Owner. Items that the Owner will pay as a direct cost to the onsite construction project not related to the cost of the work and excluding Construction Manager's off-site office personnel, office expenses, capital and interest cost/expenses. This contract excludes reimbursable items. All items considered to be reimbursables shall be included in the Construction Manager's General Conditions/Construction Phase Service Fee.

8.5.3 Subcontractors submitting a bid that requires exterior structural harding shall be required to submit along with the bid the Florida Product Approval Number of each specified item.

- 8.6 Construction Manager Responsible for Acts of Subcontractors.** Construction Manager shall be responsible for any and all acts, defaults, omissions or negligence of its Subcontractors and consultants, and shall be and remain liable and obligated to Owner for all Services, Work, materials and other items subcontracted. It is expressly agreed that no relationship of contract, obligation or otherwise shall be created between Owner and any Subcontractor or consultant of Construction Manager, and a provision to this effect shall be inserted into all Subcontracts and other agreements between Construction Manager and its Subcontractors and consultants. In no event shall Owner be liable to any of Construction Manager's Subcontractors for Work performed by such Subcontractor on behalf of the Construction Manager or for the Project. Neither Architect nor Owner will be asked to resolve disputes between Construction Manager and any Subcontractor or disputes between Subcontractors.
- 8.7 Other Bid Requirements.** All bid openings will be held in the Owner's facility with the Owner's Representative(s) present. Provide the pre-qualified bidders list to the Owner's Representative five (5) days prior to bid opening. Construction Manager shall provide originals of all bids to Owner's Representative.
- 8.8 Special Services.** Construction Manager shall, as required by Contract Documents, schedule and coordinate services from surveyors, testing laboratories, inspectors and other special consultants required for the completion of the Work.
- 8.9 Orders of Materials and Equipment.** Construction Manager shall schedule, coordinate, expedite, and effect the purchase and delivery to the Project site of materials and equipment required to be provided by Construction Manager pursuant to the Contract Documents. Construction Manager shall perform expediting and inspection services after the placement of all such orders.
- 8.10 Procurement of Materials and Equipment on Owner's Behalf.** Construction Manager shall be responsible for scheduling and coordinating, all materials, furnishings, tools, fixtures, computers, and equipment to be furnished by Owner under the terms of the Contract Documents for use in performance and completion of the Work. The purchase price and transportation and storage costs associated with such items shall be borne by Owner, and shall not be counted against the GMP.
- 8.11 Direct Purchase.**
- 8.11.1** The Owner is tax exempt and upon agreement with the Construction Manager may wish to exercise its right to purchase directly various construction materials, supplies and equipment that may be part of this Contract. The Owner will, via its purchase orders, purchase the materials and the Construction Manager shall assist the Owner in the preparation of purchase orders. The Owner may direct the Construction Manager to prepare the purchase order on the Owner's form and make ready for verification and execution by the Owner. The materials may be purchased from the vendors/suppliers selected by the Construction Manager, for the price originally negotiated by the Construction Manager. The Construction Manager will prepare a list of materials, supplies and equipment and the Owner will advise the Construction Manager which items from the list it wishes to purchase directly, with enough lead time to allow this request to be incorporated into the overall construction schedule.

8.11.2 The Construction Manager is to provide an estimated direct purchase amount at the time the Guaranteed Maximum Price is submitted. The Guaranteed Maximum Price amount shall be reduced by the net, undiscounted amount of the purchase order, plus all sales taxes that would have applied. **ISSUANCE OF THE PURCHASE ORDERS BY THE OWNER DOES NOT CHANGE ANY OF THE CONSTRUCTION MANAGER'S RESPONSIBILITIES REGARDING MATERIAL PURCHASES, OR INSTALLATIONS, WITH THE SOLE EXCEPTION OF THE PAYMENTS FOR THE MATERIALS SO PURCHASED.** The Construction Manager remains fully responsible for all other obligations it has under the terms of this contract regarding materials purchased, including but not limited to, coordination of the work including ordering of materials, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, checking shipping tickets, and invoices, installation, cleaning, all applicable warranties. Regardless of any direct purchase, the Construction Manager remains responsible for ensuring that all materials purchased meet the requirements of the Contract Documents.

8.11.3 In the event that materials, supplies, or equipment purchased under this option, are defective or rejected for any reason whatsoever, and it becomes necessary in the opinion of the Construction Manager to initiate legal action against the responsible party, the Owner agrees to assign and subordinate to the Construction Manager any claims the Owner has against the responsible party resulting from the purchase order and to execute any legal documents necessary to accomplish the assignment, subordination or subrogation of such claims, and to cooperate with the Construction Manager in such legal action.

8.11.3.1 All funds not spent on a direct purchase order shall be returned to the GMP. All expenditures in excess of the direct purchase order will be adjusted, by supplement to the purchase order, and deducted from the GMP. All outstanding invoices on a direct purchase order after the final pay application is processed shall be paid by the Construction Manager.

8.12 Materials Stored. For work on which the Construction Manager intends to request payment for materials stored at the site the Schedule of Values will list materials and labor as separate line items.

ARTICLE 9

CONSTRUCTION ADMINISTRATION

9.1 Construction Manager to Enter into Subcontracts. Construction Manager shall enter into Subcontracts with Subcontractors for the performance of those portions of the Work not performed directly by the Construction Manager. Construction Manager shall protect Owner's interests during the performance of such Subcontracts and shall monitor and secure strict performance by the Subcontractors of all duties and obligations contained in the Subcontracts. Construction Manager shall promptly notify Owner's Representative in writing of any material breach by a Subcontractor and shall take all necessary steps to remedy such breach and to minimize the effect of such breach on the timely and proper completion of the work, all at no additional cost to

Owner.

- 9.2 Scheduling and Coordinating Construction.** Construction Manager shall be responsible for scheduling, coordinating, assigning work areas and sequencing the Work to be performed and for coordinating same with Architect's services and with Owner's activities and ongoing operations and any Work that may be performed by Owner's own forces or other Contractors, in a manner so as to complete the Project by the Substantial Completion Date. Construction Manager shall perform all Services required under the Contract Documents in an expeditious fashion.
- 9.3 Preconstruction Conference.** At an appropriate time after execution of Subcontracts, Construction Manager, Architect and Owner shall conduct a preconstruction conference and shall review with the Subcontractors any special requirements of Owner with respect to the Work, including Project access, safety requirements, Construction Manager guidelines, contract procedures, scheduling, requests for payment, Submittals, Change Orders, inspections, and any and all other matters relevant to the performance of Construction Manager, Architect, and the Subcontractors. Construction Manager shall prepare and furnish to Owner's Representative, Architect, and Subcontractors, within two (2) working days after the preconstruction conference, detailed minutes of such conference.
- 9.4 Confirmation of Insurance.** Construction Manager shall timely procure and review all insurance certificates and policies required by the Contract Documents and the Subcontracts and provide copies of same to Owner's Representative. Construction Manager shall immediately cure and correct any failure of any Subcontractor or other person to comply and remain in compliance with the insurance requirements of the Contract Documents and the Subcontracts. Construction Manager shall not permit any Subcontractor to enter the Project site or perform any Work relating to the Project unless such Subcontractor is and remains insured in accordance with the insurance requirements set out in the Contract Documents and the Subcontracts.
- 9.5 Review and Approval of Subcontractor Schedules of Values.** Construction Manager shall obtain, and carefully review, all schedules of values from each Subcontractor, together with any supporting documentation or data, which Owner or Construction Manager may require from the Subcontractors. The purpose of such review and examination shall be to protect Owner from front-end loading and an unbalanced schedule of values, which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or than is reasonable under the circumstances. If any Subcontractor schedule of values is found not to be appropriate, or if the supporting documentation or data is deemed to be inadequate, Construction Manager shall negotiate with the Subcontractor to establish a balanced schedule of values. After making its review and examination, if the Subcontractor schedules of values are found by Construction Manager to be appropriate as submitted, or if necessary, as revised, Construction Manager shall sign and deliver same to Owner's Representative thereby indicating Construction Manager's informed belief that such schedules of values constitute a reasonable, balanced basis for payment to the Subcontractors. Construction Manager shall not sign a Subcontractor schedule of values in the absence of such belief unless directed to do so, in writing, by Owner's Representative.

- 9.6 Supervision of Subcontractors.** Construction Manager shall maintain a continuous presence on the Project site at all times during the Construction Phase of the Project through the provision of sufficient qualified supervisory and other personnel to perform the Services and obligations of this Contract. Construction Manager shall continually supervise its own forces and its Subcontractors. Construction Manager shall determine the adequacy of personnel, labor, materials, equipment and direct supervision provided by Subcontractors and shall monitor their compliance with the Construction Schedule.
- 9.7 Job Progress Meetings.** Construction Manager shall conduct meetings at least weekly, and at such additional times as the needs of the Project or good construction management practice may require, with the Subcontractors, for the purpose of discussing all matters relating to the quality, quantity, and progress of the Work. Construction Manager shall also conduct meetings at least weekly, and at such additional times as the needs of the Project or good construction management practice may require, with the Owner/Architect for the purpose of discussing all matters relating to the quality and progress of the Work. Construction Manager shall within two (2) working days after each of the meetings prepare and distribute minutes of such meetings to Owner's Representative, the participants and others who should reasonably be informed of the meetings.
- 9.8 Requests for Information and Interpretation.** In cooperation with Architect, Construction Manager shall promptly provide information and interpretations to Subcontractors as necessary for the execution of the Work and shall expedite same where necessary to maintain the Construction Schedule. Where appropriate, Construction Manager shall transmit to Architect, and to Owner's Representative, requests for information or interpretation from itself or as made by any Subcontractor regarding the intent and meaning of the Design for Construction. Construction Manager shall maintain a log of all requests for information and interpretation (the "Request Log"), recording; (a) the date each request was made; (b) the date the request was transmitted to Architect and Owner's Representative; (c) the date of receipt of the response to the request; and, if applicable; (d) the date the response to the request was transmitted to the Subcontractor. The request shall be a part of the minutes required in Section 9.7.
- 9.9 Submittals.** Construction Manager shall review, and indicate its approval (or require re-submission if necessary) prior to forwarding to Architect and/or Owner each Submittal required by the Contract Documents, including shop drawings, product data, samples, catalogues, and other submittals (collectively, "Submittals"), provided, however, that complete shop drawings for a single trade be submitted and no partial submittals will be reviewed without the prior written agreement of Architect and Owner. Provided further that submittals requiring color selections which may require additional time, especially where color selection of related items is critical, must be submitted before final selections are made. Approval by Construction Manager of Submittals shall constitute Construction Manager's representation to Owner that such Submittals are in conformance with the requirements of the Contract Documents. The review and approval required by this paragraph shall be completed with reasonable promptness, and expedited where necessary, so as to cause no delay to the Subcontractors, Architect, or the Project. Construction Manager shall also maintain a detailed log (the "Submittal Log"), reflecting: (a) the date, where applicable, the Subcontractors submit to Construction Manager, and the Construction Manager submits to Architect and/or

Owner, each Submittal; (b) the date of approval or rejection of each Submittal by Construction Manager or Architect; (c) the reason for the rejection of any Submittal; and (d) the date of each subsequent action by Construction Manager, Architect, Owner, or Subcontractors with respect to any Submittal. The Submittal log shall be part of the minutes required in Section 9.7. Construction Manager shall immediately report to Owner's Representative and Architect in writing any substantial delays in the Submittal process and the cause thereof and shall take appropriate steps to coordinate and expedite the Submittal process. The Architect's review of submittals shall not relieve the Construction Manager from its obligation for performance of the Work in strict compliance with the Contract Documents.

- 9.10 Subcontractor Payments.** Construction Manager shall promptly pay all indebtedness for labor, materials, services, tools and equipment, and for any other Items used in the performance of the Work and in compliance with Florida State Statutes.
- 9.11 Conditions of Employment.** Construction Manager shall comply, and shall require all subcontractors to comply, with Applicable Laws relating to the terms and conditions of employment of any employee who is employed in connection with the Project.
- 9.12 Protection of Persons and the Work.** Construction Manager shall at all times take, or require to be taken, all necessary steps required to safeguard Owner's students, employees and property from injury or loss in connection with the performance of the Work and the Services. Construction Manager shall take, or require to be taken, all necessary steps to protect Owner's equipment, adjacent facilities, apparatus, and other property and all adjacent Work and property, including, but not limited to, the use of shoring, boarding, and other safeguards. Where the Work endangers the safety of pedestrians and drivers, barricades for traffic shall be used. Construction Manager shall keep Owner's property and the Work reasonably free from dampness, dirt, dust, and other damage and shall provide all reasonable security measures necessary to protect the Project from the elements, vandalism, theft, and other risks of property loss. All temporary protections shall be removed by Construction Manager upon completion of the Work.
- 9.13 Demolition, Removal of Materials and Burning.** Except with prior written approval of the Owner the use of explosives will not be permitted. The procedure proposed for the accomplishment of any required demolition work shall be submitted to Architect and Owner's Representative for approval. The procedure shall provide for safe conduct of the work, careful removal and disposition of materials, protection of property, which is to remain undisturbed, and coordination with other Work in progress. The procedures shall include a detailed description of the methods and equipment to be used for each operation, and the sequence of operations. All materials Indicated to be removed shall be legally disposed of off the Owner's property. The use of burning at the Project site to dispose of refuse and debris may be permitted with Owner's permission and proper permits. Construction Manager shall control the amount of dust resulting from the operations to prevent the spread of dust from creating a nuisance in the surrounding area.
- 9.14 Site Limitation.** Construction Manager shall obtain Owner's Representative's authorization before establishing staging or "lay-down" areas.

- 9.15 Corrective Work.** Construction Manager shall ensure correction and completion of all defective or incomplete Work. Such corrective Work shall be coordinated with and performed in such a manner as to minimize disruption to Owner's personnel facilities, and the operations of and at no cost to Owner.

ARTICLE 10

UNCOVERING AND CORRECTING WORK

- 10.1 Uncovering Work Covered Contrary to Directions.** All work is to be inspected by Owner and Architect before covering. If any of the Work is covered contrary to the request of Owner's Representative or the Architect, or contrary to any provision of the Contract Documents, said Work shall, if required by Owner's Representative or the Architect, be uncovered for Inspection and any defective or incomplete work shall be properly corrected at Construction Manager's expense without change in the Substantial Completion Date or the GMP.
- 10.2 Correction of Defective Work.** Construction Manager shall immediately proceed to correct Work rejected by Owner's Representative or by the Architect as defective or failing to conform to the Contract Documents, unless such Work is accepted in accordance with paragraph 10.5 below. Construction Manager shall bear all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections and any fees and expenses of the Architect made necessary thereby, without adjustments to the GMP or the Substantial Completion Date.
- 10.3 Correction During One Year Following Completion.** If within one (1) year after Final Completion any of the Work is found to be defective or not in strict accordance with the Contract Documents, Construction Manager shall correct such Work promptly upon receipt of written notice from Owner. This obligation shall survive Final Payment by Owner and/or termination of this Contract.
- 10.4 No Period of Limitation Established.** Nothing contained in paragraph 10.3 shall establish any period of limitation with respect to Construction Manager's other obligations and warranties under the contract, including, without limitation, Article 3. Establishment of the one year time period in paragraph 10.3 above relates only to Construction Manager's specific duty to correct or complete the Work.
- 10.5 Owner's Option to Accept Defective Work.** Owner may, at its sole discretion, choose to accept defective or nonconforming Work. Such acceptance shall not be effective unless specifically and expressly stated in writing by Owner's Representative. In such event, the GMP shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Work, regardless of whether Final Payment has been made or the defective Work replaced or corrected, the intent being that Owner may use such funds to remedy such defects at a time and in a manner convenient to Owner. If the unpaid portion of the GMP, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Construction Manager shall, upon written demand from Owner, pay Owner any shortfall of compensation for accepting defective or nonconforming Work.

ARTICLE 11

INSPECTIONS AND CERTIFICATIONS OF COMPLETION

- 11.1 Inspection of Work.** Construction Manager shall, on a continuous basis as a part of its day-to-day supervision of the Project, inspect the Work to ensure that the quality, quantity and progress of the Work meets the requirements of the Contract Documents. In making such inspections, Construction Manager shall reject Work that is defective or deficient, take steps to avoid unexcused delays in the performance of the Work, and protect Owner from overpayment.
- 11.2 Standard of Construction and Identification of Defective Work.** Construction Manager shall cause the Project to be constructed in strict compliance with the requirements of the Contract Documents and Applicable Laws. Construction Manager shall correct all work that does not meet the requirements of the Contract Documents and applicable laws unless the departure from such standards is specifically identified to, and thereafter authorized in writing by, Owner's Representative. Unless so authorized by Owner's Representative, Construction Manager shall correct all Work that does not meet the requirements of the Contract Documents and Applicable Laws.
- 11.3 Equipment and Other Items.** When instructed by Owner's Representative, Construction Manager shall schedule and perform factory testing and shop inspections of equipment, fixtures, furnishings, and other items. Such testing and inspections shall be performed at times appropriate to the stage of fabrication, construction, installation, and testing of such items. Construction Manager shall notify Owner's Representative prior to each such testing or inspection, and Architect and Owner's Representative or his designee shall be entitled to accompany Construction Manager for such testing and inspections.
- 11.4 Inspection upon Arrival, During Installation, and after Installation.** Upon arrival of any materials, supplies, systems, equipment, fixtures, furnishings, and other items at the Project site, whether procured by Construction Manager, Owner, or Architect, Construction Manager shall inspect such items for damage, for compliance with the Contract Documents and for compliance with all shipping documents and shall arrange for the proper storage and security of such items. Construction Manager shall also provide for and monitor the proper and timely installation of all such items on the Project. After such items are installed or made ready for use, Construction Manager shall again inspect all such items for damage and shall arrange for and monitor testing of all such items for compliance with the Contract Documents and readiness for use on the Project. If damage is discovered, Construction Manager shall immediately notify, in writing, the supplier, shipper, and Owner's Representative of such damage and shall lodge and pursue all appropriate claims associated with such damages.
- 11.5 Punch Lists and Correction of Defective Work.** As per the Contract Documents the Construction Manager shall make a punch list in writing and complete the items on this list. Upon completion of the Construction Manager's punch list, the Construction Manager shall submit a "Request for Punch List Inspection". Construction Manager shall then, and with the assistance of Owner and Architect, prepare, and enforce a punch list and other itemizations of defective, deficient, or Incomplete Work. Construction Manager shall report to Owner's Representative in its Monthly Reports its progress in correcting and completing such defective, deficient, or incomplete Work.

- 11.6 Construction Manager's Observation of Testing and Start-Up.** Construction Manager shall schedule (and notify Owner's Representative of such schedule), coordinate, and observe the testing and start-up of all utilities, systems, fixtures, and other equipment and shall report the results of same to Owner's Representative in writing.
- 11.7 Transfer of the Work and the Project to Owner.** Construction Manager shall provide assistance to Owner in the transfer of the completed Project, and all portions thereof, to Owner. Such assistance shall include procuring certificates of ownership, titles and warranties, procuring keys to the Project, operations and maintenance manuals and instructions, procuring supplies, start-up of Project systems, transferring Project security, arranging for training Owner in the operation and maintenance of all systems and components of the Project, and such other matters as may relate to Owner's initial occupation, possession, and use of the Project or any part thereof. All activities shall be coordinated around the Owner's staff and schedule.
- 11.8 Substantial Completion of the Project.** When Construction Manager believes that Substantial Completion of the entire Project, or a designated part thereof, has been achieved, it shall notify Architect and Owner's Representative in writing and request an inspection for certification of Substantial Completion. Construction Manager shall thereafter meet on site with Owner's Representative and Architect to determine whether Substantial Completion of the Project, or the designated part thereof, has in fact been achieved. Construction Manager's written request for such inspection shall constitute a representation by Construction Manager to the Owner that Construction Manager has made all inspections of the Work required by the Contract Documents and that, to the best of Construction Manager's information and knowledge, the Work has been performed in strict compliance with, and the quality of the Work meets or exceeds the requirements of, the Contract Documents. If Owner's Representative and Architect agree that Substantial Completion of the Project, or the designated part thereof, has been achieved, they shall execute a Certificate of Substantial Completion. If Owner's Representative and Architect, upon inspection, conclude that Substantial Completion has not been achieved and that re-inspection will be necessary, Construction Manager shall bear all costs of same.
- 11.9 Final Completion of the Project.** When Construction Manager believes that Final Completion of the entire Project has been achieved, it shall notify Architect and Owner's Representative in writing and request an inspection for certification of Final Completion of the Project. Construction Manager shall thereafter meet on site with Owner's Representative and Architect to determine whether Final Completion of the Project has in fact been achieved. Construction Manager's request for such inspection shall constitute a representation by Construction Manager to Owner that Construction Manager has made all inspections of the Work as provided in the contract and that, to the best of Construction Manager's knowledge and belief, all the Work has been completed in strict compliance with the Contract Documents and that the quality of the Work meets or exceeds the requirements of the Contract Documents. If Owner's Representative and Architect agree that Final Completion of the Project has been achieved, they shall execute a Certificate of Final Completion of the Project. If Owner's Representatives and Architect, upon inspection, conclude that Final Completion has not been achieved and that reinspection will be necessary, Construction Manager shall bear all costs of same.

11.10. Final Acceptance: The starting date for all guarantees shall be from the date of substantial completion of the project. The more stringent of the Guarantees and Warranties in the Contract Documents shall apply.

11.10.1 Responsibility of the Construction Manager: Neither the final certificate of payment nor any provisions in the CONTACT DOCUMENTS shall relieve the CONSTRUCTION MANAGER of the responsibility for negligence, faulty materials, or workmanship within the extent and period provided by law.

11.10.2 Guarantee Periods: Guarantee periods shall be as in the Contract Documents or until the defect is permanently corrected to the satisfaction of the OWNER:

11.10.3 Certification: The Subcontractors and suppliers shall prepare statements in the form approved by the Owner certifying that the work performed and materials supplied are in compliance with the Contract and confirming the appropriate guarantee period.

a. The Subcontractor shall submit the above statements to the Construction Manager.

b. The Construction Manager shall transmit the certified statements to the Architect.

11.10.4 Bonding Company: Failure of the Construction Manager or the Subcontractors to fulfill obligations of the guarantee will result in appropriate notice to the Bonding Company for action.

ARTICLE 12

PROJECT DOCUMENTATION

12.1 Basic Project Documentation. Construction Manager shall maintain the following documents on behalf of and for the use of Owner: (a) a complete set of current Subcontracts and Contract Documents, including a current set of drawings, specifications, Change Orders and modifications reflecting product and materials selections and as-built conditions on the Project; (b) all shop drawings, samples, product data, and other Submittals; (c) a clean set of the principal building layout lines, floor levels, and key site elevations certified by a qualified surveyor or engineer; (d) all required insurance certificates from Subcontractors; and (e) all other documents required by this Contract.

12.2 Daily Log. Construction Manager shall maintain a log of daily reports ("Daily Log") which shall identify daily weather conditions and any impact on the Work caused thereby, Construction Manager's personnel on site, all Subcontractors working each day and the number of employees of each on the Project, all visitors, the Work accomplished each day, any equipment failures or breakdowns, any procurement or delivery problems, any job site accidents or injuries, any safety or environmental violations, warnings or citations, and any other events, circumstances, or occurrences

impacting the progress or cost of the Project. Submit copy of the "Daily Log" to the Owner with each periodic pay request.

- 12.3 Monthly Reports.** Each month Construction Manager shall prepare and submit to Owner's Representative a written report detailing the progress of the Project (the "Monthly Report"). The Monthly Report shall contain Construction Manager's estimate of percentage of completion of the Project and each element thereof, identify any and all delays to the Project and the cause and extent thereof and describe the remedial measures being taken to overcome such delays, identify any defective or deficient Work installed during the preceding month and describe the remedial measures being taken to correct the defective or deficient Work, identify any outstanding requests for information or clarification, requests for interpretation, change order requests, questions, or other matters requiring the response of either Owner, Construction Manager, Architect, or a Subcontractor and shall include any and all other information required to fully inform Owner of the status of the Project and the performance of Construction Manager, Architect, and Subcontractors. The Monthly Report shall include the Construction Schedule updates, updated cash flow forecasts, and updated comparisons of actual and estimated construction costs to the GMP and the Construction Cost Estimates as required by the terms of this Contract.
- 12.4 Review and Assignment of Warranties.** Construction Manager shall obtain and shall transmit to Owner's Representative all special product, system, equipment or material warranties required by the Contract Documents and the Subcontracts. Construction Manager shall review all such warranties to confirm that the warranties are in compliance with the requirements of the Contract Documents and Subcontracts. By execution of this Contract, Construction Manager hereby assigns to Owner all of Construction Manager's rights, title and interest in and to any and all warranties, including Uniform Commercial Code warranties, that Construction Manager receives or is entitled to receive from any Subcontractor or supplier in connection with the Project.
- 12.5 Operations and Maintenance Documentation.** Construction Manager shall obtain and transmit to Owner's Representative all documentation required by the Contract Documents regarding the operation and recommended maintenance programs relating to the various elements of the Project. Two (2) complete sets of documentation shall be furnished to Owner's Representative in uniform three-ring binders labeled with the Project name and number.
- 12.6 Review and Approval of As-Built Drawings.** The Construction Manager shall continuously maintain a set of drawings clearly indicating the exact location and depth of all buried plumbing, sanitary sewers, storm sewers, heating, gas piping and electrical work with accurate dimensional reference to buildings or other fixed points.
- 12.6.1 Approval:** As-Built Drawings shall be reviewed by the Architect prior to approval of the Construction Manager's periodical request for payments.
- 12.6.2 Withholding of Periodical Payments:** Failure on the part of the Construction Manager to maintain current As-Built Drawings will be cause to withhold all or portions of the monthly payments.

12.6.3 Completion: Upon completion of the work under this Contract and prior to requesting final payment, the Construction Manager shall deliver the As-Built Drawings to the Architect.

12.7 Availability of Project-Related Records to Owner. All records relating directly or indirectly to the Project which are in the possession or control of Construction Manager shall be made available to Owner, its designee, and any governmental authority for audit, inspection, and copying upon request of Owner's Representative. Such records include, without limitation: all drawings, specifications, submittals, subcontractor bids, the Daily Log, correspondence, the Request Log, the Submittal Log, minutes, e-mail documents, memoranda, tape or videotape recording, photographs, including aerial photographs, or other writings or things which document the Project, its design, and its construction.

12.8 Maintenance of Project-Related Records. Construction Manager shall maintain and protect all Project-related records, including but not limited to Daily Log and Project Journal, other than those required to be returned to Owner, for no less than two (2) years after Final Completion of the Project and for any longer period of time as may be required by law.

12.9 Project Videotapes and Photographs. If at any time requested by Owner's Representative, Construction Manager shall, at Owner's expense, record periodic narrated videotapes or take photographs depicting progress of the Work. Any specific safety or environmental incidents are to be videotaped at the time of the incident without waiting for Owner authorization. All videotapes and photographs shall be submitted to Owner's Representative on a weekly basis.

ARTICLE 13

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

13.1 Provide Project Information. Owner shall provide Construction Manager with adequate information regarding Owner's requirements for the Project including any desired or required design or construction schedule, any budgetary requirements, and adequate complete sets of the Design for Construction.

13.2 Review of Documents. Owner shall review any documents submitted by Construction Manager requiring Owner's decision and shall render any required decisions pertaining thereto.

13.3 Access to the Site and the Work. Owner shall provide Construction Manager access to the site and to the Work as necessary for Construction Manager to perform the requirements of the Contract Documents.

13.4 State Agencies. All permits and fees in connection with water management districts, the Florida Department of Transportation, the Florida Department of Health and Rehabilitative Services, and the Florida Department of Environmental Protection will be the responsibility of and at the expense of the Owner unless otherwise specifically provided in the Contract Documents.

- 13.5 Timely Performance.** Owner shall perform those duties set forth in this article in a timely fashion so as to permit the orderly progress of Construction Manager's Services and the Work.
- 13.6 Owner's Reviews, Inspections, Approvals, and Payments.** Owner's review, inspection, or approval of any design document, Work, or any documents prepared or submitted by Construction Manager shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Owner's construction program and requirements, and Construction Manager understands that Owner is relying on Construction Manager to assure strict compliance with the Contract Documents. No review, inspection, or approval by Owner of such Work or documents shall relieve Construction Manager of its responsibility for the strict performance of its obligations under the Contract Documents or for the accuracy, adequacy, fitness, suitability, or coordination of its Services and work product. Approval by any governmental or other regulatory agency or other governing body of any Work, design document, or Subcontract shall not relieve Construction Manager of responsibility for the strict performance of its obligations under the Contract Documents. Payment by Owner shall not constitute a waiver of any of Owner's rights under the Contract Documents or at law, and Construction Manager expressly accepts the risk that defects in the Services or in the Work, if any, may not be discovered until after payment, including Final Payment, is made by Owner.
- 13.7 Non-Waiver.** Owner's failure to exercise any right or remedy hereunder or to require strict compliance with any obligation of Construction Manager under the Contract Documents shall not constitute a waiver or an estoppel of the right to exercise such right or remedy or to insist on such compliance at any other time or on any other occasion.

ARTICLE 14

PAYMENT TO CONSTRUCTION MANAGER

- 14.1 Basis of Compensation.** Owner shall pay, and Construction Manager shall accept, as full and complete compensation for Construction Manager's assumption and performance of all duties, obligations, Services and Work required by the Contract Documents, the Construction Phase Compensation, as defined herein; provided, however, that such sum shall not exceed the Guaranteed Maximum Price set forth in paragraph 14.2.1
- 14.1.2 Construction Phase Compensation.** For Construction Manager's performance of the Work and all Construction Phase Services in strict conformance with the Contract Documents, and subject to the GMP, Owner shall pay Construction Manager "Construction Phase Compensation" consisting of: Subcontract Costs, Plus General Conditions and Construction Phase Services Fee. The cost of bond and insurance and any contingency will be added after the Construction Phase Services Fee is calculated. The Construction Phase compensation shall be deemed to include, without limitation, such items as overhead, profit and all expenses incurred in performance of the Work and all Construction Phase Services.

14.1.3 Construction Phase Services Fee. The "Construction Phase Services Fee" shall be _____% of the subcontractors' cost. The Construction Phase Services Fee shall be invoiced and paid in accordance with paragraphs 14.4 and 14.7; provided, however, that at no time shall the cumulative percentage of the Construction Phase Services Fee invoiced or paid exceed the cumulative percentage of the Work actually complete, as measured against the Construction Manager's schedule of values and as certified by Architect.

14.1.4 General Conditions Fee. The General Conditions Fee shall include all labor and expense items specifically required to complete the scope of work as called for in the contract documents. General Conditions Fee shall be invoiced and paid in equal monthly increments based upon _____ months of anticipated construction phase schedule.

14.2 Guaranteed Maximum Price. Within forty-five (45) days after the Owner's issuing of the Contract Documents, Construction Manager shall submit to the Owner a proposed GMP. The contract award shall be based on a line item Guaranteed Maximum Price (GMP). If and when approved by Owner, the proposed GMP shall become the GMP for the Project and shall be entered in subparagraph 14.2.1 herein. The GMP shall be the maximum amount that Construction Manager shall receive for achieving Final Completion in strict accordance with the Contract Documents and performance of all the Work and the Services required by the Contract Documents, subject to additions and deductions by written Change Order. All Subcontract Costs, or other costs of any kind incurred by Construction Manager in connection with the Project in excess of the GMP shall be paid by Construction Manager without reimbursement by Owner unless otherwise compensable by written Change Order pursuant to the Contract Documents. Should the combined sum of final Subcontract Costs, Construction Management Fee and contingency be less than the GMP, the resulting savings shall be allocated to Owner.

The Construction Managers' Fee shall include without limits the general conditions, profit and overhead incurred during the Construction Phase Service. The Construction Managers' Fee shall be based on the negotiated fixed fee as determined by the cost of work relative to the percentage designated in the negotiation questionnaire. Line items such as Builders Risk insurance, bond, General Conditions, Construction Manager fee and any contingency are to be added below and after the cost of the work is calculated to arrive at the Guaranteed Maximum Price. Liability Insurance shall be itemized and in no case exceed 1% of the cost of the work. Reimbursable line items in the GMP are not allowed. All reimbursable items are to be carried in General Conditions/Construction Phase Service Fee.

14.2.1 Amount of GMP. The amount of the GMP shall be to be determined later (\$ _____) and equals to:

\$ _____	for Subcontractor Cost
\$ _____	for Construction Phase Services Fee
\$ _____	General Conditions
\$ _____	Insurance
\$ _____	Bond
\$ _____	Contingency

14.2.2 Lack of Agreement on GMP. In the event that Construction Manager and Owner are unable to agree on a GMP, Owner may, in its sole discretion, terminate this Contract by written notice to Construction Manager. In the event of such termination, Owner has no liability to Construction Manager.

14.3 Contingency. The Guaranteed Maximum Price may also include an agreed sum between Construction Manager and Owner as Contingency. Notwithstanding any provisions to the contrary elsewhere in this Contract, such Contingency may be used by Construction Manager, upon Owner review and approval.

14.4 Schedule Of Values. Construction Manager shall prepare and present to Owner's Representative within thirty (30) days after commencement of the Construction Phase, and prior to the first periodic pay request, a proposed schedule of values allocating the actual cost of the Work, Construction Management Fee and Subcontract Costs to be incurred during the Construction Phase and any contingency. The Construction Manager's Schedule of Values shall be prepared with such detail and supported by such data as may be required to substantiate the accuracy of Subcontractor Costs, Construction Management Fee, Bond and any Contingencies among the different elements of the Work. The Schedule of Values is to be reviewed and approved by the Architect and the Owner's Representative. Construction Manager's proposed schedule of values shall be used in determining the amounts payable to Construction Manager hereunder, but only after it has been acknowledged in writing by the Architect and the Owner's Representative. The schedule of values may not be revised after the first periodic pay request submittal.

14.5 Form of Pay Requests and Backup Documentation. As soon as practicable after the last business day of each month, Construction Manager shall submit an invoice to Owner's Representative, with a copy to the Architect, requesting payment ("pay request") for ninety percent (90%) of the Subcontract Costs actually and reasonably incurred by Construction Manager, and that portion of the Construction Management Fee or any approved use of the Contingency, earned by Construction Manager, in the performance of Services and the Work during the preceding month. At no time shall the cumulative sum invoiced or paid exceed an amount equal to the GMP multiplied by the percentage of the Work actually and satisfactorily complete. Each pay request shall separately show the amounts of Construction Management Fee being claimed in connection with such pay request and any amounts claimed in connection with a Change Order. Pay requests shall also indicate Construction Manager's estimate of the percentage of completion of the Project and each element thereof according to the line items established in the schedule of values. Unless otherwise directed by Owner's Representative, pay requests shall be submitted in quadruplicate, bearing the appropriate project numbers designated by Owner's representative, to Architect and to Owner's Representative for approval. Pay requests shall be accompanied by documentation in support of Subcontract Costs as Architect or Owner's Representative may require including partial lien releases.

14.6 Certification Relating to Pay Requests. Each pay request shall bear the signature of Construction Manager's project manager, which signature shall constitute Construction Manager's representation to Owner that the Services and the Work indicated in the pay request have progressed to the level represented, have been properly and timely performed as required herein, that no Work has been covered contrary to the request of the Owner's Representative or the Architect, or contrary to

any provision of the Contract Documents, that the Subcontract Costs claimed in the pay request have been actually, necessarily, and reasonably incurred, that all obligations of Construction Manager covered by prior pay requests have been paid in full, and that, to the best of Construction Manager's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Construction Manager that payment of any portion thereof should be withheld. Submission of Construction Manager's pay request for Final Payment shall further constitute Construction Manager's representation to Owner that, upon receipt from Owner of the amount requested, all obligations of Construction Manager to others incurred in connection with the Project will be paid in full within fourteen (14) days of such receipt or as negotiated by Owner and Construction Manager. In the event that Owner becomes informed that any of the foregoing representations by Construction Manager are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Construction Manager until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

14.7 Progress Payments During Construction. At no time during construction will the Owner make payments to the Construction Manager in excess of ninety percent of the value of the work completed and materials suitably stored on the site.

14.7.1 Monthly Payments. Progress payments by the Owner to the Construction Manager will be made at least once each month.

- a. Progress payments are made on Friday of each week except when holidays fall on Thursday or Friday. No payments will be made for those weeks.
- b. The Construction Manager shall deliver four copies of the Periodical Request for Payment to the Architect, no later than noon on Friday two weeks prior to the payment date, which shall set forth the required information regarding the work completed during the applicable period.
- c. The fee shall be billed and paid at the same rate/percentage as the percent of completion of the project.

14.7.2 Certification by Architect. The Architect shall review and certify the Periodical Request for Payment and submit two copies to the Owner, no later than noon on Wednesday of the week prior to the payment date.

14.7.3 Material Payments. When the Construction Manager requests payment for materials stored at the site, the conditions of storage shall be acceptable to the Architect and the Owner.

- a. The Construction Manager shall provide satisfactory evidence of the value of materials stored.
- b. No payment shall be made for materials not stored at the site.

14.8 Payment at Substantial Completion. Subject to the limitations of the GMP and provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the Certificate of Substantial Completion of the Project, Owner shall pay Construction Manager all sums due Construction Manager, less any amounts

attributable to liquidated damages, and less two hundred percent (200%) of the reasonable cost for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. As a condition precedent to such payment, however, Construction Manager shall deliver to Owner's Representative the final complete set of as-built drawings in the form of marked-up blue-line drawings, all required releases of lien, all certificates of occupancy or similar documents required for the occupation and use of the Project for its intended purposes, all required warranties and all Project Documentation as described in Article 12 herein.

14.9 Lien Releases and Claim Waivers. Construction Manager's application for Final Payment shall be accompanied by final lien releases and waivers of claim from Construction Manager and all Subcontractors.

14.10 Payment at Final Completion. Subject to the limitations of the GMP, and provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the Certificate of Final Completion of the Project, Owner shall pay Construction Manager all unpaid sums including retainage due Construction Manager under this Contract, less any amount properly withheld pursuant to this Contract ("Final Payment"). Construction Manager's acceptance of Final Payment shall constitute an unconditional waiver and release of all claims by Construction Manager for additional compensation beyond that provided in the Final Payment. Final Payment by Owner shall not, however, constitute a waiver by Owner of its rights or claims arising from Construction Manager's failure to perform in strict accordance with the requirements of the Contract Documents.

14.11 Withholding of Payment. Any provision of the Contract Documents notwithstanding, Owner shall not be obligated to make a payment or payments to Construction Manager which are otherwise due, if, and for so long as, any one or more of the conditions set forth in this paragraph 14.10 exists.

14.11.1 Construction Manager's pay request is not in the form or supported by the documentation required by this Contract.

14.11.2 Construction Manager is in default of any of its obligations under the Contract Documents.

14.11.3 Any part of such payment is attributable to Services or Work which are defective or not strictly conforming with the requirements of the Contract Documents: provided, however, that payment shall be made as to the part thereof attributable to Services or Work which are rendered or performed in strict accordance with the Contract Documents and are not defective, subject to other provisions hereof.

14.11.4 Construction Manager has failed to make payments promptly to its Subcontractors, consultants, employees, or others performing Services in connection with the Project or any person has filed a claim that Construction Manager has failed to make payments due to such person.

14.11.5 Any person has asserted a claim against Owner in whole or in part on account of alleged acts or omissions of Construction Manager.

- 14.11.6 Evidence that the balance of the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the GMP.
- 14.11.7 Failure or refusal by Construction Manager to perform the Work in accordance with the Contract Documents.
- 14.11.8 Damage to Owner or to a third-party to whom Owner is, or may be, liable.
- 14.11.9 Any situation or condition exists which, as set forth elsewhere herein or in the Contract Documents, justifies the withholding of payments. In the event that any of the foregoing conditions exist, Owner shall be entitled to withhold from any sum then due or thereafter to become due, including from retained sums, an amount sufficient in the sole judgment of Owner's Representative to satisfy, discharge, and defend against such claims and to make good any losses, prospective losses, costs, attorney's fees, and other expenses which may result from the existence of such conditions.

14.12 Disputed Pay Requests. In the event Owner's Representative or the Architect disagrees with or questions all or any portion of any pay request, the amount due to Construction Manager, or the sufficiency of the information and documentation submitted by Construction Manager, Owner's Representative or the Architect shall notify Construction Manager in writing and Owner shall pay the undisputed parts of such pay request. If Owner's Representative and Construction Manager are able to agree on the amount due under the disputed part of any pay request, payment will be made to Construction Manager within the time provided by paragraph 14.7 of this Contract or ten (10) working days after receipt of a new pay request representing the agreed amount, whichever is later.

14.13 Conditions Precedent to Payment. In addition to all other conditions contained herein, it shall be a condition precedent to any payment otherwise due hereunder that: (a) Construction Manager not be in material breach of this Contract or in breach of any warranty made therein; (b) Construction Manager have submitted all monthly updated Construction Schedules, Monthly Reports, and Project cost summaries required by this Contract; and (c) Construction Manager have submitted its pay requests and backup documentation in the time, form, and manner required by this Contract.

14.14 Non-Waiver of Claims for Defective Work. Neither entrance, inspection, nor use of the Project by Owner, Architect, or their representatives nor any payment (whether final or otherwise) made by Owner shall be construed as an acceptance of defective or nonconforming Work nor shall such entrance, inspection, use, or payment release Construction Manager from any of its obligations under the Contract Documents.

ARTICLE 15

CHANGE ORDERS

15.1 Adjustments to Contract Amount. The Owner without invalidating the Contract may alter, add or deduct from the Work, and shall adjust the Contract amount accordingly.

1. **Extension of Time:** All such work shall be executed under the conditions of the original contract except that any claim for extension of time must be made with the change order. No extension of time will be allowed unless it is shown to the satisfaction of the Owner that the change makes it impracticable for the Construction Manager to finish the project on time.
2. **Pricing:** In the event a change is requested, the Architect shall, within seven days after written notification from the Owner, provide the Construction Manager with a pricing bulletin. The Construction Manager shall, within ten days of receipt of the pricing bulletin, provide the Architect and Owner with a price for the proposed change.
3. **Approval for Change Orders:** Change orders and adjustments shall be in writing and approved by the Architect, the Construction Manager and the Owner; otherwise no claim for extras will be allowed.
4. **Completion of Work:** Failure to agree upon a price will not excuse the Construction Manager from proceeding with the Work. The Construction Manager will be charged with completion of the work upon written notice by the Owner that the work is to be completed and will be compensated as provided in 15.3 below.
5. **Additional Expense:** All additional expenses that the Construction Manager may incur as a result of a change must be included in any change order. The Construction Manager will not be entitled to additional delay damages in the event the Contract is delayed as a result of a change.

15.2 Increase or Decrease in Contract Amount. With each proposal for a change involving an increase or decrease in the amount of the Contract, the Construction Manager shall submit an itemized breakdown to include but not be limited to the following:

1. Material quantities and unit prices separated into trades.
2. Labor costs.
3. Construction equipment.
4. Overhead, profit and bond (maximum 11%) for increases only.
5. In the event a change of work is required, the Construction Manager's maximum fee percentage for self-performed tasks, including overhead and profit, direct labor and materials costs and actual equipment costs, shall be between 3.75% and 5%.

6. The mark-up, including general conditions and Construction Manager's fee, shall only apply when additional time is granted and only at the rate agreed to in Article 14.1.3.
7. All increases related to changes in work will be calculated in total at the end of the project, and not for each individual change.
8. In the event such change in the work is performed by a SUB-CONTRACTOR, a maximum of (10%) mark-up for all overhead and profit, direct labor, material costs and actual equipment costs shall be permitted.

15.3 Extra Work: The Construction Manager shall notify all Subcontractors of the following, which shall also apply to the Construction Manager.

1. **Written Authority:** No claims for "Extra Work" will be allowed by the Architect unless written authority has been obtained from the Owner.
 - a. Should the Construction Manager or any Subcontractor start any such work without having prior written approval, it will be construed as an acceptance of such work required under the Contract, and no claim for "extras" will be considered or allowed by the Owner.
 - b. The Subcontract shall submit any claims for "extras" or additions to the Construction Manager. The Construction Manager shall immediately submit such claims to the Architect who shall submit justification to the Owner for consideration.
2. **Determination of Value:** The value of any extra work or change shall be determined in one or more of the following ways:
 - a. By estimate and acceptance in a lump sum.
 - b. By unit prices named in the Contract or subsequently agreed upon.
 - c. In the event the Construction Manager and Owner cannot agree on a fixed price for the change, the Construction Manager shall complete the work and be paid by cost plus an added percentage in the amount of 11%, or by cost plus a fixed fee. Alternatively, the Owner may elect to have another contractor perform that portion of the work affected by the change.
3. **Payment:** Based on cost plus an added percentage or by a cost plus a fixed fee all extra work done shall be performed as specified by the Owner, and will be paid for in the following manner.
 - a. The Construction Manager shall receive the actual cost of materials used as shown by the original receipted bills, to which the percentage shown above shall be added.
 - b. The Architect shall allow the Construction Manager a reasonable rental rate for any special equipment or machinery required to perform the work.

- (1) Said rental rate shall be agreed upon in writing prior to performing the work, to which sum no percentage shall be added.
 - (2) Said rental rate shall not exceed the lesser of rates charged by local rental agencies or as provided in the latest current construction equipment rental schedule as published by Associated General Contractors.
 - c. The Owner will have the right to audit all requests for payment on a cost plus basis. The Construction Manager shall cooperate in all respects in providing all information needed to complete any audit.
4. **Time and Material Report:** The Construction Manager shall keep a careful record of all labor and material used in connection with the work which shall be supported by a daily time and material report.
- a. Time and material shall be in addition to the Construction Manager's records covering lump sum work.
 - b. These records must be made on the proper form, and must be available to the Owner and the Architect or the Architect's representative at all times.
 - c. All requests for payment for items other than lump sum items must be compiled from said records, broken down sufficiently to be checked by the Architect against the Construction Manager's daily record.

ARTICLE 16

CLAIMS BY CONSTRUCTION MANAGER

- 16.1 Generally.** All claims against Owner or applications for an extension of the contract completion date shall be initiated by a written claim submitted by Construction Manager to Owner's Representative. Such claims shall be submitted to, and received by, Owner's Representative not later than ten (10) days after the event, or the first appearance of the circumstances or conditions, giving rise to the claim, and same shall set forth in detail all known facts supporting the claim. Oral claim submissions even if documented by meeting minutes or otherwise, shall not satisfy this requirement and will not be considered. Submission of this written claim is a material condition of this contract and failure to timely comply with this requirement will result in denial of the claim. Construction Manager and Owner shall continue their performance under this Contract regardless of the existence of any claims submitted by Construction Manager.
- 16.2 Claims for Additional Compensation.** In the event Construction Manager seeks to make a claim for an increase in its compensation, and/or an adjustment of the GMP Construction Manager shall strictly comply with the requirements of paragraph 16.1 and such claim shall be made by Construction Manager before proceeding to execute any additional or changed work. Failure to satisfy this condition shall constitute a waiver by Construction Manager of any claim for additional compensation. Any

liability of the Owner or Construction Manager for claims or damages from or against one another shall be strictly limited to actual and reasonable direct costs incurred by the claiming party except for Owner's damages resulting from Construction Manager's delays in achieving Substantial Completion, which damages shall be liquidated as provided in Article 7.9. The Construction Manager will not be entitled to delay damages. In no event shall the Owner be liable to the Construction Manager for any form of special, indirect or consequential damages of any kind, however the same may be caused, including, without limitation, the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of Owner or others. No change in Construction Manager's compensation, nor adjustment of the GMP, shall be made except by Change Order issued in accordance with the terms of this Contract.

16.3 Extensions of Time. In the event the Construction Manager should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting in the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not reasonably anticipated, fire or other Acts of God, the Substantial Completion Date, or as applicable, the date for Final Completion, may be appropriately adjusted by the Owner upon the written claim of the Construction Manager to the Owner and the Architect. A "task is critical" within the meaning of this paragraph 16.3 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Construction Manager shall strictly comply with the requirements of paragraph 16.1 above. If the Construction Manager fails to make such claim as required by this Article 16, any claim for an extension of time shall be waived. Granting an extension shall not entitle the Contractor to recover delay damages from the Owner. No delay damages will be recoverable from the Owner regardless of the cause of the delay.

16.4 Claims for Concealed or Unknown Conditions. In the event the Construction Manager discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Construction Manager's compensation and the GMP may be modified, either upward or downward, upon the written claim made by either party within ten (10) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Construction Manager due to concealed and unknown conditions, the Construction Manager must give the Owner and the Architect written notice of, and an opportunity to observe such condition prior to disturbing it. The failure by the Construction Manager to give the written notice and make the claim as provided by this paragraph 16.4 shall constitute a waiver by the Construction Manager of any rights arising out of or relating to such concealed and unknown condition.

ARTICLE 17

PAYMENT AND PERFORMANCE BONDS

17.1 Execution of Performance Bond. Unless excluded by amendment to this contract, the Construction Manager submitting the successful bid shall furnish a satisfactory performance and payment bond with a corporate SURETY authorized to do business

in the State of Florida within fourteen calendar days after the notice of Contract award. The bond shall be written for 100% of the GMP.

17.1.1 Owner's Form. The Owner shall provide the form for the performance and payment bond for execution by the Construction Manager and the SURETY.

17.1.2 Guarantee. The performance bond shall be conditioned to both perform the Contract and guarantee payment of all legitimate invoices for labor and materials in the performance of the work, including the guarantee against faulty work and materials for a period of one year from acceptance by the Owner.

17.1.3 Surety Rating. The performance and payment bond shall be acceptable to the Owner only if the SURETY is rated as follows:

- a. **Contract Amount Under \$500,000.** The SURETY shall be in compliance with the provisions of the Florida Insurance Code and shall hold a current valid Certificate of Authority issued by the United States Department of Treasury under Section 9304 and 9308 of Title 31 of the United States Code.
- b. **Contract Amount Over \$500,000.** The performance and payment bond shall be acceptable to the Owner only if the SURETY has a current Best's rating of Excellent (A or A-) or Superior (A+) and holds a current Department of the Treasury Certificate of Authority as Acceptable Surety with an underwriting limitation of at least two times the dollar amount of the contract.

For contracts with a dollar amount exceeding one half the underwriting limitation of the Surety but not exceeding the limitation the Surety will be acceptable subject to evidence of reinsurance with a company meeting the requirements of the paragraph above.

17.1.4 Execution by Surety. All bonds must be executed under corporate seal of the SURETY and countersigned on behalf of the SURETY by its qualified resident agent or attorney-in-fact with proof of power attached.

17.1.5 Default. In case of default on the part of the Construction Manager, actions for all expenses incident to ascertaining and collecting losses under the bond shall lie against the bond, including architectural, engineering, and legal services.

ARTICLE 18

CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS

18.1 Personnel. Construction Manager shall assign only qualified personnel to perform the Services. At the time of execution of this Contract, the parties anticipate that the individuals named in Exhibit "B", attached hereto, will perform those functions indicated. So long as the individuals named in Exhibit "B" remain actively employed or retained by Construction Manager or its affiliates or subsidiaries, and Owner does not require removal as provided in paragraph 18.2. they shall perform the functions indicated next to their names. Construction Manager shall not remove or substitute

such personnel without Owner's Representative's written approval, which shall not be unreasonably withheld.

- 18.2 Removal of Personnel and Subcontractors.** If, at any time during the course of the Project, Owner's Representative reasonably determines that the performance of any member of Construction Manager's staff or any of Construction Manager's Subcontractors or consultants working on the Project is unsatisfactory, Owner's Representative may, in writing, require Construction Manager to remove such staff member or terminate such Subcontractor or consultant from the Project immediately and replace the staff member, Subcontractor or consultant. The Guaranteed Maximum Price shall be increased by the amount of additional costs, if any, incurred in replacing such Subcontractor or consultant.
- 18.3 Employment Taxes.** Construction Manager shall be responsible for payment of all unemployment compensation, social security, and other similar taxes and benefits covering its employees.
- 18.4 Gifts and Gratuities.** No School Board employee may accept any gifts or other gratuities, the value of which exceeds Fifty Dollars (\$50.00), excluding instructional materials, from any party or a representative of any party doing business with the School Board. Giving or granting such gifts and/or gratuities to School Board employees shall be reason to be deny future opportunities for work as a construction manager or a subcontractor.

ARTICLE 19

OWNERSHIP OF DOCUMENTS

All Contract Documents, as well as information and items provided by Owner to Construction Manager to facilitate Construction Manager's performance hereunder, shall remain the exclusive property of Owner.

ARTICLE 20

INDEMNITY

- 20.1 General Indemnity.** Construction Manager shall indemnify and hold Owner harmless from and against all liability, claims, loss, damages, costs and expense, including attorneys' fees and expenses, and fees and expenses of experts, arising out of or resulting from any and all negligent acts or omissions, or both, of Construction Manager, its Subcontractors, and the employees, agents, and consultants of any of them. In the event Owner is alleged to be liable to any person or entity on account of alleged acts or omissions, or both, of Construction Manager, its Subcontractors, or the employees, agents, and consultants of any of them, Construction Manager shall defend Owner against such allegations through counsel acceptable to Owner, and Construction Manager shall bear all costs, fees and expenses of such defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses, and any resulting settlement, judgment, or award. This duty to indemnify and defend Owner shall apply to, claims for bodily injury (including death), and for damage to or loss of property, and for environmental damage and liabilities, incurred or sustained by Owner or any third person. Should Construction

Manager fail to perform its duties to defend and indemnify Owner as required herein, Owner may defend or settle such claims as it deems prudent, in the exercise of reasonable judgment, and Construction Manager agrees to be bound by any such defense, settlement, judgment, or award that may result from such action by Owner.

20.2 Venue for Legal Actions Any legal action brought in this regard shall be filed in the County of Polk County or the Middle District of Florida.

ARTICLE 21

INSURANCE

21.1 Insurance Requirements. The Construction Manager shall submit proof of:

21.1.1 Worker's Compensation Insurance. Worker's Compensation Insurance as required by Chapter 440, Florida Statutes (Minimum Employers Liability of \$100,000 per accident, \$100,000 per bodily injury or disease of employee and \$200,000 aggregate).

21.1.2 Public Liability Insurance. Public Liability Insurance to include:

- Automobile Insurance - All Vehicles, owned, nonowned or hired
- Comprehensive General Liability
- Contractual Liability
- Products and Completed Operations Liability
- Personal Injury Liability
- Owners and Construction Managers Protective Liability

Contract Amount	Maximum Limits of Liability	Per Claimant	Per Incident or Occurrence
Under \$1,000,000	Bodily Injury	\$ 100,000	\$1,000,000
	Personal Injury	100,000	1,000,000
	Property Damage	100,000	1,000,000
1,000,000 to 3,000,000	Bodily Injury	250,000	1,000,000
	Personal Injury	250,000	1,000,000
	Property Damage	250,000	1,000,000
Over 3,000,000	Bodily Injury	500,000	5,000,000
	Personal Injury	500,000	5,000,000
	Property Damage	500,000	5,000,000

21.1.3 Builder's Risk Coverage. Builder's Risk coverage shall include the perils of fire, extended coverage's, vandalism, and malicious mischief. This coverage shall be maintained at one hundred percent of the value at risk for the full term of construction and until accepted by the Owner.

- a. Builder's Risk coverage is required on all new building construction including additions to existing buildings.

- b. The Owner will provide coverage for remodeling or renovation work to protect only the Owner against loss caused by perils of fire, vandalism, malicious mischief and those included in extended coverage to the full insurable value thereof.
- c. For projects involving both new construction and remodeling or renovation the Construction Manager is required to provide Builder's Risk coverage for the new construction portion of the Work.
- d. For remodeling or renovation work, the Construction Manager is required to provide an "installation floater" or other insurance coverage suitable to the Owner for protection of materials and equipment in transit and in storage at the site or other locations until said materials and equipment become incorporated into the Owner's existing structure.

21.1.4 Proof of Insurance. The Construction Manager shall furnish the original policies or standard form of certificates to the Owner prior to commencing work under the Contract as evidence of the required insurance coverage outlined in the Contract Documents, together with assurance that said insurance coverage shall not lapse or be canceled during the work covered thereby without giving the Owner thirty days written notice of the intention to lapse or cancel same.

21.1.5 Insurance Companies. All insurance companies must be authorized to do business in the State of Florida.

21.1.6 Additional Insured. "The School Board of Polk County, Florida" will be named as an "Additional Insured."

ARTICLE 22

SUSPENSION

22.1 Suspension of Work. Owner may for any reason whatsoever suspend, in whole or in part, performance of the Work and Construction Manager's performance under this Contract. Owner's Representative shall give written notice of such suspension to Construction Manager specifying when such suspension is to become effective and the scope of the Work and the Services affected by such suspension.

22.2 Ceasing Performance upon Suspension. From and upon the effective date of any suspension ordered by Owner, Construction Manager shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the suspended portion of the Work or the Services. From and upon the effective date of any suspension ordered by Owner, Construction Manager shall cease performing Services under this Contract, and shall cause all Subcontractors to cease performing Work, related to the suspended portion of the Work or the Services, and shall utilize its best efforts to mitigate its costs resulting from the suspension.

22.3 Resumption of Work after Suspension. If Owner lifts the suspension it shall do so in writing signed by Owner's Representative and Construction Manager shall promptly resume performance of the Services and cause the Subcontractors to resume performance of the Work, unless, prior to receiving the notice to resume, Construction Manager has exercised its right of termination as provided in paragraph 23.8 herein.

22.4 Claim For Costs of Suspension. In the event the suspension or termination is not caused by the failure of the Construction Manager to comply with the terms of this contract, within twenty (20) days after either the resumption of the suspended portion of the Work or Services or the termination of this Contract by Construction Manager pursuant to paragraph 23.8, Construction Manager shall submit an itemization of the following cost items reasonably and necessarily expended by Construction Manager as a direct result of the suspension, together with pricing or other data required by Owner's Representative:

- (a) Salaries of Construction Manager's home or branch office employees, or both, but only to the extent that such employees were directly impacted by said suspension;
- (b) Salaries of Construction Manager's field employees, costs of construction tools, equipment, and field office costs;
- (c) Subcontract Costs reasonably and unavoidably incurred on account of the suspension;
- (d) Any other items directly related to the suspended part of the Services or the Work.

Construction Manager's failure to provide such itemized information within such twenty (20) day time period shall constitute a waiver of any claim to compensation relating to the suspension of Construction Manager's work under this Contract. Owner shall promptly review Construction Manager's itemization and shall issue a Change Order providing for payment to Construction Manager of such amounts, and only such amounts, listed above as may be due on account of the suspension and increasing the GMP by like amount. In no event shall Construction Manager be entitled to lost profits, other consequential damages, delay damages or any items of damage related to or resulting from a suspension of the Services or of the Work except for those items enumerated in this paragraph 22.4.

The Construction Manager will not be entitled to additional compensation if suspension or termination is caused by the failure of the Construction Manager to comply with the terms of the contract.

ARTICLE 23

TERMINATION

23.1 Termination for Convenience. Owner may for any reason whatsoever terminate performance of the Services, the Work, this Contract, or any part of any of them, for Owner's convenience. Owner shall give written notice of such termination to Construction Manager specifying when termination becomes effective and the scope thereof.

23.2 Ceasing Performance upon Termination. From and after the effective date of any termination, Construction Manager shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the terminated portion of

the Work or Services. From and after the effective date of any termination, Construction Manager shall cease performance and cause the Subcontractors to cease performance, to the extent of the terminated portion of the Work or Services. In the event of termination of this Contract, Construction Manager shall terminate outstanding Subcontracts and purchase orders related to the terminated portion of the Work or Services unless directed to do otherwise in writing by Owner's Representative. Owner's Representative may direct Construction Manager to assign, and Construction Manager hereby agrees to assign Construction Manager's right, title and interest under open or terminated Subcontracts to Owner or its designee. Unless directed otherwise in writing by Owner's Representative, Construction Manager shall settle the liabilities and claims arising out of the termination of the Subcontracts. If requested in writing by Owner's Representative, Construction Manager shall vacate the Project site immediately.

23.3 Submission of Termination Claim. In the event of termination of all or any part of the Services, the Work or this Contract for convenience, Construction Manager shall, within ninety (90) days after the effective date of termination, submit a written notice of claim to Owner specifying the amounts due because of the termination together with costs, pricing, and other supporting documentation or data required by Owner's Representative. Construction Manager's failure to file a notice of claim within such ninety (90) day period shall constitute a waiver of any claim to compensation relating to the termination. If a proper termination claim is submitted, then Owner shall pay Construction Manager an amount derived in accordance with paragraph 23.4 herein. Claims submitted under this Article 23 shall not be subject to the procedure set forth in Article 16.

23.4 Compensation for Termination for Convenience. As full compensation due to Construction Manager for any termination for convenience, including any amounts due to a Subcontractor on account of such termination, Owner shall, subject to subparagraph (e) below, pay Construction Manager the following amounts:

- (a) Reasonable costs of settling and paying claims arising out of the termination of Subcontracts or orders pursuant to the order of termination;
- (b) The unpaid portion of the Construction Management Fee earned to the date of termination as determined by the terms of paragraph 14.1;
- (c) If it appears that the Construction Manager would not have profited, would have sustained a loss, or that its fees would have been diminished if the entire contract would have been completed, no fees shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any, notwithstanding the provisions of subparagraph (a) and (b) of this paragraph.

23.4.1 The total sum to be paid the Construction Manager under this paragraph 23.4 shall not exceed the GMP, as properly adjusted, reduced by the amounts of payments otherwise made, and shall in no event include duplication of payment.

23.4.2 In no event shall Construction Manager be entitled to recover from Owner, on its own account or on behalf of a Subcontractor, lost profits or other consequential damages, whether its own or those of a Subcontractor, on account of a termination for convenience or an erroneous termination for cause, as described below.

23.5 Termination for Cause. If Construction Manager refuses or fails to perform its Services and duties under this Contract in a timely manner, supply enough properly skilled supervisory personnel, labor or proper equipment or materials, make prompt payment to its Subcontractors, suppliers, employees, or consultants, or comply with Applicable Laws, or if Construction Manager is otherwise guilty of a material breach of this Contract or any warranty made herein, then Owner may, after ten (10) days written notice of default, and without prejudice to any other right or remedy, terminate the employment of Construction Manager, in whole or in part, and take possession of the Project site, the Contract Documents, Subcontracts, Project Documentation in the possession of Construction Manager, and all equipment and materials at the site.

23.6 Erroneous Termination for Cause. In the event the employment of Construction Manager is terminated by Owner for cause and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under paragraph 23.1 and the provisions of paragraph 23.4 regarding compensation shall apply.

23.7 Completion by Owner and Survival of Obligations. Following any termination, whether for convenience or for cause and whether in whole or in part, Owner may complete the terminated portion of the Work and the Services by whatever means Owner deems most expedient. Construction Manager's obligations and all provisions of this Contract shall continue in full force and effect as to all Work or Services performed prior to the effective date of the termination and as to that portion of the Work and Services not affected by the termination.

23.8 Construction Manager's Right to Terminate. The Construction Manager may stop work or terminate the Contract under the following conditions:

23.8.1 Public Authority. Should the work be stopped by any public authority for a period of thirty days or more through no fault of the Construction Manager.

23.8.2 Owner's Action. Should the work be stopped through act or neglect of the Owner for a period of twenty-one days or more.

23.8.3 Failure to Pay. Should the Owner fail to pay the Construction Manager any approved payment within fifteen days after it is due.

23.8.4 Recovery. In the event that Construction Manager stops the work due to the above event, the Construction Manager shall give seven days written notice to the Owner and recover from the Owner payment for all work executed which shall include losses sustained and reasonable profits.

ARTICLE 24

ENVIRONMENTAL CONSIDERATIONS

- 24.1 Environmental Licenses, Certifications, & Permits.** Construction Manager covenants and agrees that during the term of the Contract and any extensions or renewals thereof, all of its employees, agents, representatives, and Subcontractors, if any, performing Work will have the requisite skills, licenses, certifications, training, permits and the like mandated by all applicable federal, state and local governing authorities with jurisdiction over environmental matters. Construction Manager agrees to provide to Owner's Representative evidence of compliance with the requirements of this paragraph upon demand.
- 24.2 Environmental Laws.** Construction Manager, its Subcontractors, representatives, employees, and/or agents shall comply with all federal, state, and local laws, rules, and ordinances relating to environmental protection governing the Work.
- 24.3 Termination.** Construction Manager agrees that a material breach of any of the terms, conditions, and obligations of this Article would be detrimental to Owner, a material breach of this Contract and grounds for Owner's immediate termination of the Contract.
- 24.4 Application with Other Provisions.** The provisions of this Article 24 shall operate in addition to, and not in limitation of, any other obligations contained in the Contract Documents.

ARTICLE 25

MISCELLANEOUS PROVISIONS

- 25.1 Notices.** No notice is effective until the writing containing the notice is placed in the hand of the Owner's Representative or the Construction Manager's Project Manager or is postmarked by certified U.S. Mail, to the following addresses:

To Owner: The School Board of Polk County, Florida

1915 South Floral Avenue

Bartow, Florida 33830

Attention: _____

To Construction Manager: _____

Attention _____

All notices shall be effective upon receipt.

- 25.2 Successors and Assigns.** Construction Manager shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without Owner's Representative's written consent; Owner shall have the right to assign its rights under this Contract, but any such assignment shall not relieve Owner of its obligations hereunder. Subject to the provisions of the immediately preceding sentence, Owner and Construction Manager, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Contract and to the successors, assigns and legal representatives of such other party with respect to all terms and conditions of this Contract.
- 25.3 No Third Party Beneficiaries.** Nothing contained in this Contract shall create a contractual relationship with, or any rights in favor of, any third party, including any Subcontractor.
- 25.4 Severability.** In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction or other competent tribunal or rendered invalid by any legislative or regulatory enactment, the remaining provisions of this Contract shall remain in full force and effect, and such holding or enactment shall not invalidate or render unenforceable any other provision hereof.
- 25.5 Headings.** The headings used in this Contract are merely for convenience and shall have no other force, effect or purpose.
- 25.6 Exhibits.** All exhibits annexed hereto are incorporated by reference and made a part of this Contract.
- 25.7 "Including".** The terms "including", "includes", and their derivatives are not intended as terms of limitation, and shall be deemed in each instance to be followed by the phrase "without limitation."
- 25.8 Governing Law.** This Contract shall be construed, interpreted, and enforced in accordance with the laws of the State of Florida.
- 25.9 Entire Contract/Amendments in Writing.** This Contract represents the entire agreement between Owner and Construction Manager and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. Subject only to the provisions of Article 15, this Contract may be amended only by written instrument signed by both Owner and Construction Manager.
- 25.10 Waiver.** No waiver by Owner of any one or more defaults by Construction Manager in the performance of the provisions of this Contract shall be construed as a waiver of any other defaults, whether of a like kind or different nature.
- 25.11 Mediation of Disputes.** In the event a substantial dispute arises between the parties to this agreement as to any of the agreement's provisions, the performance of the agreement, or the agreement as a whole, the parties agree that upon the written request of either party, they will attempt to resolve the dispute through non-binding mediation. Each party agrees to participate in the mediation as soon as possible after a request is made and to participate in good faith. The parties further agree that the mediation will be conducted by a Mediator certified by the Supreme Court of Florida.

The mediator will be chosen by the Owner and the parties participating in the mediation will share the Mediator's fee equally.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates indicated below.

OWNER:

THE SCHOOL BOARD OF POLK COUNTY, FLORIDA

By: _____
Board Chair

(SEAL)

Attest: _____
Secretary

Date: _____

CONSTRUCTION MANAGER:

By: _____
(Signature)

Attest: _____
(Signature)

(SEAL)

Date: _____

EXHIBIT "B"
(Construction Manager's Letterhead)

Quotation #: _____ Project #: _____

Project Location/Description: _____

Division #: _____

Description of item(s) to be bid: _____

Drawings and/or specifications sent: _____ Data: _____

Date to return bids: _____

Bid Opening Locations: _____

Bids to be opened: Date: _____ Time: _____

Method of returning bids to Construction Manager: _____ Faxed _____ Sealed

Vendor/Sub-Contractor's Name	Bid Amount	Method	Date Received	Time
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

EXHIBIT "D"

SMALL BUSINESS PARTICIPATION LOG

PROJECT #: _____

PROJECT NAME: _____

CONSTRUCTION MANAGER: _____

- A. Please provide number of bids sent to Certified Small Business Enterprises.
- B. Please list below only those WMBE firms who returned a bid.

Name	Address	Phone Number	Specialty

EXHIBIT "E"

"ADDENDUM TO CONTRACT"

Project #: _____ Name: _____ Location: _____

Copy of areas with blanks.

1.2 The Architect as used herein refers to the person, firm or corporation with whom a Contract has been entered with the Owner, directly or through an authorized representative, for the performance of any work covered under the Contract Documents. _____ has been contracted to perform architectural services for Project Number _____.

7.1 **Commencement and Completion Date.** The Commencement Date of this Contract will be on the fourteenth calendar day after the Contract is awarded by the Owner and will be substantially complete as quickly as possible not to exceed _____ (_____) consecutive calendar days, said substantial completion date being the _____ day of _____, 20_____.

Construction Manager shall achieve Final Completion of the Work within _____ days after the Substantial Completion Date.

7.9 **Stipulated Damages.** The Construction Manager and the Owner stipulate to liquidated damages, which shall be in addition to any other damages to which the Owner may be entitled as follows:

The Construction Manager shall pay the Owner a one time sum of \$_____ plus the sum of \$_____ per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work.

14.2.1 **Amount of GMP.** The amount of the GMP shall be _____ (\$_____) and equals to:

- \$_____ for Subcontractor Cost
- \$_____ for Construction Management Services Fee
- \$_____ General Conditions
- \$_____ for Insurance
- \$_____ for Bond
- \$_____ for Contingency

25.1 **Notices.** No notice is effective until the writing containing the notice is placed in the hand of the Owner's Representative or the Construction Manager's Project Manager or is postmarked by certified U.S. Mail, to the following addresses:

To Owner: The School Board of Polk County, Florida
1915 South Florida Avenue
Bartow, Florida 33830
Attention: _____

To Construction Manager: _____

Attention: _____