



**AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES**

BETWEEN

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

2700 Judge Fran Jamieson Way
Viera, Florida 32940-6601

Hereinafter referred to as the Owner

AND

HEARD CONSTRUCTION, INC.

95 East Hall Road
Merritt Island, Florida 32953

Hereinafter referred to as the Construction Manager

**PROJECT: Construction Management Services, Mila Elementary School
Classroom Building Addition and Renovations**

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AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This AGREEMENT is made as of the date of Board Approval,.

Between the Owner: **The School Board of Brevard County, Florida**
2700 Judge Fran Jamieson Way
Viera, Florida 32940-6601

and the Construction Manager: **Heard Construction, Inc.**
95 East Hall Road
Merritt Island, Florida 32953

For services in connection with the Project known as:

Construction Management Services, Mila Elementary School Classroom Building Addition and Renovations

In consideration of the mutual covenants and obligations contained herein, Owner and Construction Manager agree as set forth herein:

Article 1

General Agreement Provisions

1.1 Relationship. The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate fully in furthering the interests of the Owner. He agrees to furnish efficient business administration, and superintendence and use his best efforts to complete to the Project referenced in this Agreement in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

1.2 Construction Team. The Construction Manager, the Owner's Architect-Engineer, the Owner's Commissioning Agent and the Owner, including their representatives, called the "Construction Team", shall work jointly during preconstruction phases and through final construction completion and shall be available thereafter should additional services be required. The Construction Manager shall provide leadership during all project phases to the Construction Team on all matters relating to construction. Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any other person or entity other than the Owner and Construction Manager.

1.3 Scope. Construction Manager shall perform all construction management services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Owner approved Contract Documents.

1.4 Contract Term. It is the intention of the Owner to establish the contract term through December 31, 2025 or as may be extended to complete the Project. Either party may terminate this Agreement as provided in Article 12 of the General Conditions to the Contract for Construction Manager Services (**Exhibit A**).

1.5 Project Guaranteed Maximum Price. The not-to-exceed price provided by the Construction Manager (**Exhibit C**) based on the Construction Documents.

1.6 Purchase Order. The Construction Manager shall be issued Purchase Order(s) for the Project under this Agreement. The Purchase Order(s) shall be considered part of the Contract Documents.

1.7 Record Keeping and Finance Controls. Construction Manager acknowledges that this Agreement is to be administered on an open book arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Construction Manager's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Construction Manager shall preserve for a period of five (5) years after Project Final Payment.

Article 2

Contract Documents

2.1 Contract Documents. The Contract Documents are comprised of the following:

- .1 This Agreement, including all Exhibits and Attachments;
- .2 General Conditions to the Agreement for Construction Management Services (**Exhibit A**);
- .3 The Preconstruction Services Proposal submitted by the Construction Manager (**Exhibit F**).
- .4 The Guaranteed Maximum Price Proposal submitted by the Construction Manager (**Exhibit C**).
- .5 All written modifications, amendments including, as applicable, to the Project Guaranteed Maximum Price (**Exhibit C**) accepted by the Owner including Clarifications, Assumptions and Exclusions; Change Directives and Change Orders to this Agreement issued in accordance with the General Conditions to the Contract for Construction Management Services (**Exhibit A**).
- .6 Construction Contract Documents (Drawings and Specifications developed by the Owner's Architect-Engineer and approved by the Owner and all permitting/review authorities having jurisdiction);
- .7 Owner's "Purchase Order";
- .8 Owner's latest edition of "Facility Design Standards"; and updates thereto as may be directed by the Owner
- .9 The following Other Documents: The latest revision of all applicable local, state and national building codes and related codes such as, but not limited to; Florida Building Code, Florida Fire Prevention Code, Florida Existing Building Code, Florida Plumbing Code, Florida Mechanical Code, Florida Accessibility Code, National Electrical Code and State Requirements for Educational Facilities (SREF).

2.2 Intent. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the agreed upon Guaranteed Maximum Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict with words and phrases interpreted in a manner consistent with the construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Article 2.1 hereof.

2.3 Contractual Relationships. The Contract documents shall not be construed to create a contractual relationship of any kind between the Owner and any Subcontractor or Consultant, or between any persons or entities other than the Owner and Construction Manager.

2.4 Binding Documents. The Contract Documents form the entire agreement between Owner and Construction Manager, and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties, except as specifically stated in the Contract Documents.

Article 3 Indemnification and Assignment

3.1 Indemnification. Notwithstanding anything to the contrary contained herein, the Construction Manager shall indemnify and hold harmless the Owner and its officers, agents and employees from and against any, all, and every claim for, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) the Construction Manager's performance or failure to perform any of its obligations under this Agreement and (2) any claim, damage, loss or expense to any person, Owner's property including its buildings and personal property including the loss of use resulting therefrom, bodily injury, sickness, disease, intentional acts, or death, or to injury to or destruction of non-Owner personal property including the loss of use resulting therefrom and caused by any negligent act or omission of the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager may be liable. The Construction Manager's requirement to indemnify and hold the Owner harmless also includes an obligation to assume full responsibility and expense of investigation, litigation, judgment, and/or settlement of any complaint, claim, or legal action until the termination of all legal action.

Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

Except as otherwise set forth in this Agreement, the Construction Manager and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Construction Manager for acts or failures to act by Owner or the Owner's Consultants. The Construction Manager shall not be liable for acts or failures to act by the Owner or Owner's Consultants.

3.2 Assignment. The Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representative to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the written consent of the other.

Article 4
Representatives of the Parties

4.1 Owner's Representatives

- .1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Susan Hann, P.E., AICP
Assistant Superintendent Facilities Services
2700 Judge Fran Jamieson Way
Viera, Florida 32940
(321) 633-1000 ext. 11446

- .2 Owner designates the individual listed below as its Owner's Project Manager to provide direct interface with the Construction Manager with respect to Owner's responsibilities for the specific Project.

David Lindemann, AICP
Director, Planning & Project Management
Facilities Services
2700 Judge Fran Jamieson Way
Viera, Florida 32940
(321) 633-1000 ext. 11463

Christopher Payne
Construction Project Manager
Facilities Services
2700 Judge Fran Jamieson Way
Viera, Florida 32940
(321) 633-3580 ext. 13004

4.2 Construction Manager's Representatives

- .1 Construction Manager designates the individual listed below as its Senior Representative ("Construction Manager's Senior Representative"), which individual is an Officer of the Corporation authorized to sign binding agreements and has the authority and responsibility for avoiding and resolving disputes:

Andrew Day
Heard Construction, Inc.
President
95 East Hall Road, PO Box 540218
Merritt Island, Florida 32954-0218
Phone 321-877-4386
Email: aday@heardconstruction.com

- .2 Construction Manager designates the individual(s) listed below as its Construction Manager Representative (Project Manager/Superintendent) to provide direct interface with Owner with respect to Construction Manager's responsibilities for the specific Project:

Brianna Burton, Vice President
Heard Construction, Inc.
Project Manager
95 East Hall Road, PO Box 540218
Merritt Island, Florida 32954-0218
Email: bburton@heardconstruction.com

Randy Branson, Senior Superintendent
Heard Construction, Inc.
Project Superintendent
95 East Hall Road, PO Box 540218
Merritt Island, Florida 32954-0218
Email: rbranson@heardconstruction.com

In executing this Agreement, the Construction Manager represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

CONSTRUCTION MANAGER:

WITNESS:

[Handwritten Signature]

By: [Handwritten Signature]

Its: PRESIDENT

STATE OF FLORIDA
COUNTY OF BREVARD

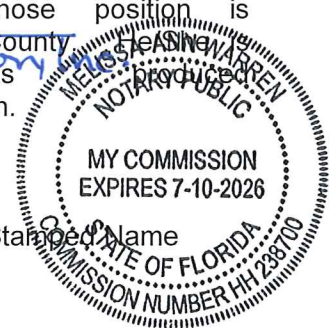
The foregoing instrument was acknowledged before me this 2nd day of November, 2023 by Andrew Day, whose position is President with the School Board of Brevard County, Florida. He/She is personally known to me heard construction or has produced [Handwritten Signature] as identification.

(SEAL)

[Handwritten Signature]

NOTARY PUBLIC

Typed, Printed or Stamped Name



**OWNER:
School Board of Brevard County,
Florida**

ATTEST:

Superintendent/Secretary

By: _____, Board Chair

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, whose position is _____ with the School Board of Brevard County, Florida. He/She is personally known to me _____ or has produced _____ as identification.

(SEAL)

Typed, Printed or Stamped Name

NOTARY PUBLIC

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- 13.4.2. Endeavor to Mediate
- 13.4.3. Shared Costs

ARTICLE 14 – FINAL DISPUTE RESOLUTION

14.1. VENUE OF FINAL DISPUTE RESOLUTION

- 14.1.1. Choice of Law
- 14.1.2. Venue
- 14.1.3. Action

ARTICLE 1 - GENERAL REQUIREMENTS

1.1 DEFINITIONS

- .1 **Agreement.** The "Agreement," which includes any exhibits, attachments and Contract Documents, is the agreement between Owner and Construction Manager for the performance of the Work in accordance with the Contract Documents as further defined in accordance with this Exhibit A.
- .2 **Commencement.** The "Date of Commencement of the Work" is the date established in the Notice to Proceed from Owner to Construction Manager. If no Notice to Proceed is issued, it will mean the effective date of the Purchase Order or such other date as may be set forth in the Agreement.
- .3 **Change Order.** Reference Article 9.1 of this Exhibit A for Definition
- .4 **Claims.** Reference Article 13.1 of this Exhibit A for Definition
- .5 **Commissioning Agent.** That individual or firm engaged by the Owner to commission the project.
- .6 **Contract Documents.** The "Contract Documents" are the documents identified in Article 2 of the Agreement.
- .7 **Construction Contract Documents.** "Construction Contract Documents" means all design documents provided by the Owner's Architect-Engineer and/or the Construction Manager and approved by the Owner pursuant to the Contract Documents, including, without limitation, those for use in construction of the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, the Schematic Design Documents, the Design Development Documents and the Construction Documents and any Addenda or Change Orders thereto.
- .8 **Construction Manager.** The firm retained by the Owner to execute the Project.
- .9 **Construction Team.** The Construction Manager, the Owner's Architect-Engineer, the Owner's Commissioning Agent and the Owner, including their Project representatives such as the Owner's Project Manager and the Construction Manager's Project Manager/Superintendent.
- .10 **Day.** The term "Day" as used in the Contract Documents will mean calendar day or accumulation of calendar days unless otherwise specifically designated.
- .11 **Design Standards.** Most recent edition of "Owner's Design Standards," including any partial updates as may be directed by the Owner.
- .12 **Drawings.** The "Drawings" are graphic representations of the Project produced by the Owner's Architect-Engineer.
- .13 **Final Completion.** The "Date of Final Completion of the Work" is the date when all Work called for in the Project Contract Documents is complete and all other terms and conditions of the Contract Documents applicable to Construction Manager have been fulfilled. The date of final completion shall be 30 days from the date of Substantial Completion unless stated otherwise in the Project Guaranteed Maximum Price (Exhibit C).

- .14 **General Conditions.** Reference Article 7.6 of this Exhibit A for Definition
- .15 **Guaranteed Maximum Price.** Reference Article 7.1 of this Exhibit A for Definition
- .16 **Laws.** The term "Laws" as used in the Agreement means applicable local ordinances, environmental protection, the State building codes, applicable city and county codes, local sanitary laws, rules and regulations, and requirements of national or federal and state authorities which are applicable to the Project or the Work, including, but not limited to, the American with Disabilities Act and all orders and interpretations by governing authorities having jurisdiction over the Project.
- .17 **Owner.** The Owner of the Project is identified as School Board of Brevard County, which may be acting through one of its divisions or subsidiaries.
- .18 **Owner's Architect-Engineer.** Where applicable within the Contract Documents, the term "Owner's Architect-Engineer" or "Architect-Engineer" shall mean a qualified, licensed design professional employed by the Owner to provide the Design Services required under this Agreement.
- .19 **Preconstruction Services Proposal.** The proposal submitted to the Owner by the Construction Manager that defines the scope of work and compensation for the preconstruction services, including preparation of the Guaranteed Maximum Price.
- .20 **Product Data.** "Product Data" shall include, but not be limited to, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, catalog cuts and other information furnished by Construction Manager or Subcontractor or an entity under contract to Construction Manager or Subcontractor to illustrate a material, product, equipment, or system for some portion of the Work.
- .21 **Project.** The total of all Work as defined by the Construction Contract Documents and as may be directed by the Owner.
- .22 **Project Construction Budget.** The budget established by the Owner.
- .23 **Project Phase.** A specific segment of the Project that may be defined by school or by system such as mechanical system or building envelope system. Project Phasing may be based on funding and/or logistical constraints and will be directed by the Owner in consultation with the Construction Manager.
- .24 **Project Schedule.** The Construction Manager's proposed time line for execution of the Project and Project Phases to include significant milestones and time required for design, bidding, procurement, submittal review and other activities required to complete the Work.
- .25 **Punch List:** The Construction Manager's list of items and the estimated cost to complete each item to render complete, satisfactory and acceptable the construction services provided by the Construction Manager in execution of the Work. The Punch List is complete when accepted by the Owner.
- .26 **Shop Drawings.** "Shop Drawings" shall consist of, but not be limited to, drawings, diagrams, schedules and other data prepared specifically for the Work by the Construction Manager or Subcontractor or an entity under contract to Construction Manager or Subcontractor to illustrate some portion of the Work.
- .27 **Specifications.** The "Specifications" are the written requirements for materials, equipment, construction systems, standards and workmanship referred to in Article 2 of the Agreement. The term "equipment" used throughout the Agreement also includes any equipment-related software.

- .28 **Subcontractor.** A "Subcontractor" is a person or entity who has a direct contract with the Construction Manager to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- .29 **Sub-subcontractor.** A "Sub-subcontractor" is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- .30 **Substantial Completion.** The "Date of Substantial Completion of the Work" or designated portion thereof is the date when construction is sufficiently complete in accordance with the Project Contract Documents, so that the Owner can occupy or utilize the Work, or designated portion thereof, for the use for which it is intended. The date of Substantial Completion shall be established in the Project Guaranteed Maximum Price (Exhibit C)
- .31 **Work.** The "Work" is the process by which the construction called for in the Contract Documents is accomplished. The Work includes any and all labor, materials, equipment and services, required to design and construct the Project, all of which will be provided in full and strict compliance with the Contract Documents. Work may be directed by the Owner in Project Phases, at the sole discretion of the Owner.

1.2 CONTRACT INTERPRETATION

- .1 **Interpretation.** The Contract Documents are to be interpreted to include all items necessary for the proper and complete performance of the Work and construction of the Project. Work that is reasonably inferable from the Contract Documents will be required if it is consistent with the intent of the Contract Documents.
- .2 **Relationship to Subcontractors or Suppliers.** The Contract Documents do not and are not to be construed to create any relationship, contractual or otherwise, between Owner and Subcontractors or Suppliers.
- .3 **Conflicts between Owner Approved Construction Contract Documents.** The parts of the Construction Documents including, but not limited to, the Drawings and Specifications are intended to be complementary and to describe and to provide documentation for the entire Project. In the event of conflict, Drawings and Specifications take precedence over the general description of the Project. Large-scale Drawings takes precedence over small-scale Drawings covering the same subject matter; but the Drawings will not take precedence over the Specifications nor the Specifications precedence over the Drawings. If the Drawings and Specifications are at variance with one another, Construction Manager will resolve the discrepancy in the best interest of the Owner and notify Owner of the resolution in writing before proceeding with any part of the Work affected thereby. Owner will respond in writing within three days of notification if Owner does not agree with Construction Manager's resolution of discrepancy.

1.3 OWNERSHIP OF CONTRACT DOCUMENTS

- .1 **Rights.** Unless otherwise provided in the Owner's Agreement with the Architect-Engineer, the Architect-Engineer and the Architect-Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Architect-Engineer's

Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect-Engineer's or Architect-Engineer's consultants' reserved rights.

- .2 **Document Reproduction.** The Construction Manager, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Architect-Engineer's Instruments of Service provided to them solely and exclusively for execution of the Work for the Project. All copies made under this authorization shall bear the copyright notice, if any, shown on the Architect-Engineer's Instrument of Service. The Construction Manager, Subcontractors, Sub-subcontractors and material or equipment suppliers may not use the Architects-Engineer's Instrument of Service on other projects, or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect-Engineer and the Architect-Engineer's consultants.
- .3 **Digital Formats.** If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions acceptable to the Owner.

1.4 **THIRD PARTY BENEFICIARY**

- .1 **Relationship.** Nothing contained in the Contract Documents shall create a contractual relationship between the Owner and any third party, however, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontracts, Purchase Orders as well as all agreements between the Construction Manager and third parties related to the Project. The Construction Manager shall incorporate the obligations of this Agreement into its respective subcontracts, supply agreements and Purchase Orders.

ARTICLE 2 - OWNER

2.1. **DUTIES AND RESPONSIBILITIES**

- .1 **Project Manager.** Owner will designate a Project Manager ("Owner's Project Manager") who will be available as required for conferences during design and at the Project Site to manage the Project on Owner's behalf. The Project Manager, will be authorized to:
 - a. Act as liaison between Owner and Construction Manager;
 - b. Make field decisions on behalf of Owner during Construction, other than contract time or contract amount which are reserved for the School Board;
 - c. Inspect and approve specified details and inspect for adherence to design and completeness of details shown on Contract Documents;
 - d. Review submittals when requested to do so by Construction Manager;
 - e. Review Change Orders; and
 - f. Coordinate with Construction Manager other Contractors of Owner.
- .2 **Surveys and Soil Reports.** Owner will provide Construction Manager with available surveys of the Project Site, soil reports, results of subsurface investigations, legal limitations, descriptions of utilities and their location and a legal description of the Project Site.
- .3 **Easements.** Owner will obtain and pay for easements required for the completion of the Project.
- .4 **Drawings.** Owner will provide to Construction Manager only the Drawings which the Contract Documents specifically require to be furnished by the Owner. Such Drawings will be provided to the Construction Manager free of charge.

2.2. **OWNER'S RIGHTS**

- .1 **Right to Inspect Work.** Owner will have the right to inspect the Work at all times. Such inspection will not relieve Construction Manager of any of its obligations to perform the Work in strict accordance with the Contract Documents.
- .2 **Right to Reject Work.** Owner will have the right to reject Work that does not conform to the Contract Documents. Owner may require special inspection or testing of the Work to determine if the Work is non-conforming. If the Work is found to be conforming, the cost of inspection or testing will be charged to Owner and an appropriate Change Order issued. If such Work is found to be non-conforming, Construction Manager will pay the cost of correction, inspection or testing.
- .3 **Right to Stop Work.** If Owner reasonably believes that Construction Manager is failing to carry out the Work in accordance with the Contract Documents, then Owner may order the Construction Manager to stop the Work, or a portion of the Work, until such time as the cause for such stop order has been eliminated. Stop orders shall be issued by Owner's Project Manager. Owner shall incur no liability for delays occasioned by any Stop-Work Order issued in accordance with this Article.
- .4 **Right to Carry Out Work.** If Construction Manager fails to prosecute the Work properly (including, but not limited to, the failure to man the Work due to labor disputes of any type) or fails to perform any provision of the Contract Documents, including, without limitation, unauthorized Project Schedule delays, Owner, after seven (7) calendar days written notice to Construction Manager without correction, may, without prejudice to any other rights or remedy Owner may have, correct the deficiencies or otherwise supplement the Construction Manager performance through the Owner's own forces or through others, and may deduct the cost thereof from the payment then or thereafter due to Construction Manager.
- .5 **Right to Audit.** A third party audit will be conducted.
- .6 **Owner's Access.** Owner will have access to the Work at all times.

2.3 **OWNER'S RIGHT TO PERFORM WORK AND ENGAGE OTHERS**

- .1 **Owner's Rights.** Construction Manager acknowledges that portions of the Work related to the Project may be performed by Owner's own forces or under separate contracts by Owner.
- .2 **Duty to Coordinate.** Nothing in the Contract Documents creates or will create any duty on the part of the Owner to coordinate the Work with the work of the Construction Manager, other Contractors or subcontractors. Construction Manager and all other Contractors and subcontractors will coordinate all work with others so as to facilitate the general progress of the Project.
- .3 **Remedy.** Construction Manager agrees that if Construction Manager is injured or damaged by any other Contractor, including without limitation, delay damages, acceleration costs, extra work claims, inefficiency claims, damage to others' work, damage to property and injuries to persons (including death), Construction Manager's sole remedy is to assert a claim or cause of action directly against the other Contractor causing the injury or damage. Construction Manager hereby releases, acquits, holds harmless and forever discharges Owner of and from any and all liability for performance or non-performance of other Contractors or for any act or omission of other Contractors.

ARTICLE 3 – OWNER'S ARCHITECT-ENGINEER

3.1 **GENERAL**

- .1 **Architect-Engineer.** The Owner shall retain an Architect-Engineer lawfully licensed to practice architecture/engineering or an entity lawfully practicing architecture/engineering in the State of Florida. That person or entity is identified as the Owner's Architect-Engineer in

the Agreement and is referred to throughout the Contract Documents as if singular in number.

- .2 **Consent.** Duties, responsibilities and limitations of authority of the Architect-Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager and Architect-Engineer. Consent shall not be unreasonably withheld.

3.2 ADMINISTRATION OF THE CONTRACT

- .1 **Authority.** The Architect-Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect-Engineer issues the final Certificate for Payment. The Architect-Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- .2 **Site Observations.** The Architect-Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work is in accordance with the Contract Documents. However, the Architect-Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect-Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Construction Manager's rights and responsibilities under the Contract Documents.
- .3 **Report of Findings.** On the basis of the site visits, the Architect-Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager, and (2) defects and deficiencies observed in the Work. The Architect-Engineer will not be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect-Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Construction Manager, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
- .4 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents, or when direct communications have been specifically authorized, the Owner and Construction Manager shall endeavor to communicate through the Architect-Engineer about matters arising out of or relating to the Contract. Communications by and with the Architect-Engineer's consultants shall be through the Architect-Engineer. Communications by and with Subcontractors and material suppliers shall be through the Construction Manager. Communications by and with separate contractors shall be through the Owner.
- .5 **Applications for Payment Review.** Based on the Architect-Engineer's evaluations of the Contractor's Applications for Payment, the Architect-Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- .6 **Rejection of Work.** The Architect-Engineer jointly with the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect-Engineer considers it necessary or advisable, the Architect-Engineer jointly with the Owner will have authority to require inspection or testing of the Work in accordance with Article 11 and Articles 2.2.1 of this Exhibit A, whether or not such Work is fabricated, installed or

completed. However, neither this authority of the Architect-Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect-Engineer to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

- .7 **Submittal Review.** The Architect-Engineer will review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect-Engineer's action will be taken in accordance with the submittal schedule approved by the Owner and Architect-Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect-Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect-Engineer's review of the Construction Manager's submittals shall not relieve the Construction Manager of the obligations under Article 4 of this Exhibit A. The Architect-Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect-Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect-Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- .8 **Preparation of Change Orders and Construction Change Directives.** The Architect-Engineer will prepare Change Orders and Construction Change Directives, and may jointly with the Owner authorize minor changes in the Work as provided in Article 9.3 of this Exhibit A. The Architect-Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Article 11 of this Exhibit A.
- .9 **Substantial Completion.** The Architect-Engineer jointly with the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Article 8.3 of this Exhibit A; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and issue a Final Certificate for Payment pursuant to Article 8.4 of this Exhibit A.
- .10 **Contract Document Performance.** The Architect-Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect-Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- .11 **Interpretations.** Interpretations and decisions of the Architect-Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.
- .12 **Requests for Information.** The Architect-Engineer will review and respond to requests for information about the Contract Documents. The Architect-Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect-Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 4 – CONSTRUCTION MANAGER

4.1. DUTIES AND RESPONSIBILITIES - GENERAL

- .1 Review of Contract Documents.** Construction Manager will carefully study and compare the Contract Documents, materials and other information provided by the Owner and shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered, or any variance from any laws. Sizes, elevations and locations of existing facilities to which connections are to be made will be verified at the Project Site by Construction Manager prior to beginning the Work.
- .2 Sufficiency of Documents.** All drawings not specifically required by the Contract Documents to be provided by Owner will be supplied by Construction Manager including, but not limited to, Shop Drawings as specified herein. All Drawings and drawings not specifically required by the Contract Documents supplied by Construction Manager will be subject to the provisions hereof concerning review and approval. Construction Manager warrants that all Contract Documents and other documents or materials prepared and/or provided by Construction Manager or Subcontractor will be complete and functional in all respects and will set forth in sufficient detail the necessary information to properly perform the Project in accordance with commonly accepted professional standards.
- .3 License - Construction.** The Construction Manager shall be a licensed construction contractor who is legally permitted to provide construction services as the prime contractor and can directly obtain all bonds and insurance required under the Contract Documents relative to construction.
- .4 Availability.** Construction Manager's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Construction Manager's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Construction Manager. Construction Manager's Representative may be replaced only with the mutual agreement of Owner and Construction Manager.
- .5 Florida Department of Education Compliance.** Construction Manager shall comply with all requirements of the Florida Department of Education (FDOE), to the end that plans and specifications shall meet or exceed the minimum standards for planning, design and construction adopted by the State Department of Education and all other applicable laws of the State of Florida. Construction Manager shall comply with all directives and memoranda issued by Owner and shall incorporate them into the Project if within the terms of this Agreement.
- .6 Intellectual Property Warranty.** Construction Manager warrants that no Work (including, design, service, equipment or material furnished or activities performed hereunder by Construction Manager or Subcontractor) will infringe upon the intellectual property rights (including trade secrets, patents, trademarks, copyright or trade dress) of any third party.
- .7 Royalties, Permits & Licenses.** Construction Manager will pay for any and all applicable royalties, permits, license fees and other fees necessary to avoid infringing or violating the rights of any third party. Such payments will be a Cost of the Work. Construction Manager will defend all suits or claims for infringement thereof and will save Owner harmless from loss on account of all materials, equipment and processes called for by the Contract Documents.
- .8 Responsibility for Employees and Others.** Construction Manager is solely responsible for the acts of its employees, Subcontractors and any other person or entity involved in performing any of the Work.

- .9 **Coordination.** Owner may provide drawings, data, recommendations, suggestions, consultation and/or other information relating to the Project from other Consultants under separate contract with Owner. Construction Manager shall coordinate and cooperate with Owner's other consultants.
- .10 **Facility Design Standards.** Construction Manager shall understand and have a working knowledge of the most recent Revision/Edition of the District's Facility Design Standards which is to be acknowledged as a referenced document in the Guaranteed Maximum Price (Exhibit "C").
- .11 **Owner Occupancy.** Construction Manager shall provide a smooth Owner occupancy of the Project. Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the Work, as completed by Construction Manager, "on line" and in such condition as will satisfy Owner's operational requirements. Construction Manager recognizes Owner is a public entity responsible for operating facilities related to public education. If the Project, or any portion, is not complete in time for regularly scheduled student occupancy, then Owner may, at its option, occupy the Project or a portion thereof prior to Construction Manager obtaining Substantial Completion. In the event of occupancy prior to Substantial Completion, the parties agree that occupancy will not be construed as acceptance of the Work or construed as Substantial Completion. Construction Manager shall conduct the punch list inspection, incorporating the Owner's punch list, and coordinate the completion of all final punch list work to be done with Owner occupancy requirements in mind.
- .12 **Commissioning.** Construction Manager and any Subcontractors shall participate in the commissioning process as directed by the Owner and the Owner's Commissioning Agent.
- .13 **Document Control.** Construction Manager shall utilize the School Board's MasterLibrary™ cloud-based construction management software system for Project document control. Access to the system will be provided at no charge; however, the Construction Manager will be required to manage access for their Construction Management team and Subcontractors. One training session will be provided to the Construction Manager and their team upon request.
- .14 **Construction Means and Methods.** Construction Manager will be solely responsible for all construction means, methods and techniques of performing the Work, including but not limited to, safety precautions and Project Site safety in the areas where Construction Manager is performing the Work and related areas impacted by the Work.
- .15 **Inspection of Project Site.** Construction Manager represents and warrants that it will inspect the Project Site and all surfaces, areas or structure(s) related to the Work, prior to performance of the Work, and immediately notify Owner in writing of any deficiencies that would adversely affect the Project. By commencing Work, Construction Manager accepts full responsibility of all surfaces, areas or structure(s) on which Work has begun, except to the extent that such deficiencies are concealed prior to the start of Work.
- .16 **Project Lines.** Construction Manager will be responsible for the accuracy of the Project lines and levels. Construction Manager will compare carefully the levels shown on the Drawings with Contract Documents provided by the Owner and will call any discrepancies to the attention of Owner in writing before proceeding with the Work. The Work will be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated and/or as necessary to drain within standard construction practices and tolerances.
- .17 **Daily Log.** The Construction Manager will maintain a daily jobsite log to record the progress of the Project. The daily log will be available to the Owner at the Project Site and will be uploaded by the Construction Manager to the Owner's Master Library Project account daily and transmitted to the Construction Team. The Construction Manager shall maintain a log

- of daily activities, including manpower records, weather, delays, major decisions, percentage of completion, etc., and require the same of Subcontractors. The Construction Manager shall maintain and shall upload to the Owner's Master Library account as necessary to remain current a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
- .18 **Purchase.** Construction Manager will purchase or otherwise arrange for and will pay for all materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities or services required for the complete and workmanlike performance of the Work, including but not limited to, temporary and permanent structures whether or not incorporated or to be incorporated into the Work.
 - .19 **Quality.** Unless otherwise specifically provided for in the Construction Documents, all equipment, materials and articles incorporated in the Work are to be new, of recent manufacture and of the best grade of their respective kind for the purpose.
 - .20 **Assignment of Purchase Orders and Agreements for Labor.** Purchase Orders, subcontracts and other agreements for labor entered into by Construction Manager in support of its performance of the Work will include a provision whereby they may be assigned to Owner. Construction Manager agrees to assign such purchase orders, subcontracts and other agreements upon Owner's request.
 - .21 **Assignment of Purchase Orders and Agreements for Materials and Equipment.** Purchase Orders, subcontracts and other agreements for materials and equipment entered into by Construction Manager in support of its performance of the Work will include a provision whereby they may be assigned to Owner. Construction Manager agrees to assign such purchase orders, subcontracts and other agreements upon Owner's request.
 - .22 **Hazardous or Toxic Materials.** No asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials will be specified or used in the Work, including, but not limited to, building materials, production processes and equipment, and utilities and other support processes and equipment. Construction Manager will communicate and enforce this prohibition with its Subcontractors and will immediately bring any observed violation(s) to Owner's attention. At the Date of Final Completion of the Work, Construction Manager will provide to Owner a written certification confirming that no asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials were specified or used in the Work.
 - .23 **Limits of Operations.** Construction Manager will confine its apparatus, equipment, storage of materials and operation of the workmen to the limits indicated by local ordinances, permits, or by direction of Owner, and will not unreasonably encumber the Project Site with materials or equipment. The Construction Manager acknowledges that construction operations will be restricted when school is in session and that the Construction Manager will not be permitted to impact student learning.
 - .24 **Interruptions of Existing Operations.** Construction Manager and all Subcontractors will schedule their Work so as not to interfere with Owner's operations and will inform Owner of the time and type of Work that will occur in its existing building. If any interruption of operations is caused by the Work, it will be done during hours that Owner is not in operation unless provisions are made in writing to temporarily relocate Owner's operations.
 - .25 **Patching.** Cutting or patching of work that may be required to complete the Project in accordance with the Contract Documents will be the responsibility of Construction Manager.
 - .26 **Salvage of Materials.** Prior to starting construction, the Owner will designate any materials and/or equipment to be salvaged by the Owner. The Construction Manager will remove the materials and/or equipment and place in an area, on site, as directed by the Owner. The Owner may also direct the Construction Manager as to materials and equipment that are to be relocated and reused on site. The Construction Manager will dispose of any materials and equipment that will not be salvaged by the Owner.

- .27 **Responsibility.** Upon receipt, Construction Manager assumes complete liability for all property, materials, equipment or other items provided by Owner to Construction Manager, unless otherwise provided in the Contract Documents.
- .28 **General Warranty.** Construction Manager warrants that it is an experienced contracting firm having the ability, skill and resources necessary to perform all services required of it under the Agreement within the established Project Schedule, and in connection with a Project having the scope and complexity of the Project.
- .29 **Warranty of Quality.** Construction Manager warrants that all Work performed under the Agreement will be of good quality, free from defects in workmanship or materials, will conform to the requirements of the Drawings, Specifications and other Contract Documents, and will be fit and sufficient for the purposes expressed in or reasonably inferred from the Contract Documents.
- .30 **Certificates of Inspection.** All required certificates of inspection, testing or approval will be obtained by Construction Manager and promptly delivered to Owner.
- .31 **Site Preparation.** Construction Manager acknowledges that the proposed site is adjacent to an active campus and will need to be secured so no students or persons can enter. Construction Manager will develop the construction schedule in collaboration with the Owner and to ensure the building may open for students no later than January 2025. The Construction Manager may need to independently survey, test or take other actions to prepare the site for construction.
- .32 **Asset Tagging.** Construction Manager will be responsible for tagging assets with QR codes as construction progresses as directed by the Owner.

4.2 TAXES

- .1 **Payment of Taxes.** Construction Manager will pay all sales, consumer, use and similar taxes levied in respect to the Work.
- .2 **Owner Direct Purchase Program.** The Construction Manager recognizes that Owner is a political subdivision of the State of Florida and as such is entitled to direct purchase materials in order to save the state sales tax. Construction Manager shall provide Owner with a list of items that may be eligible for sales tax savings prior to purchasing these materials. In the event Owner opts to make Owner-Direct Purchases, the project Guaranteed Maximum Price shall be reduced by the Owner-Direct Purchase with the corresponding sales-tax savings accrued in a Sales Tax Savings Account identified on the Project Schedule of Values and corresponding Application for Payment. Materials provided under this Sales Tax Savings program by the Construction Manager shall be based on the actual prices quoted by the Construction Manager for the materials used. The Sales Tax Savings Account shall be for the benefit of Owner only. Owner is the sole recipient of any sales tax savings and may use money generated by the savings for reduction of the Project cost, increases in the scope of Work, or any other purpose Owner so desires without extending the schedule. If any funds remain in the Sales Tax Savings Account at the completion of the Project, the Project cost shall be reduced by Change Order to return all unused Sales Tax Savings to Owner.

4.3 LEGAL COMPLIANCE, BUILDING PERMITS, FEES AND NOTICES

- .1 **Application and Payment for Permits.** Construction Manager will apply for, obtain and pay for any and all required permits and all other required approvals, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. Certain permits, regulations and fees may apply to the Work when such Work takes place beyond the limits of the school site or impacts property contiguous to the school site. This

may include, and not be limited to utility connections, hauling and disposal of materials and debris resulting from demolition. The Construction Manager shall include such cost as part of the Cost of the Work in the Guaranteed Maximum Price (Exhibit C).

- .2 **Variance of Contract Documents.** The Construction Manager is not required to ascertain that the drawings or specifications are in accordance with applicable laws, statutes, ordinances, codes rules and regulations, or lawful orders of public authorities. In the event Construction Manager believes that any of the Contract Documents are at variance with applicable Laws in any respect, Construction Manager will promptly notify Owner in writing and any necessary changes will be accomplished by an appropriate modification to the Contract Documents.
- .3 **Work in Violation of Laws.** Construction Manager will assume full responsibility for any Work Construction Manager or any Subcontractor performed that was knowingly contrary to any Laws at the time the Agreement was executed.
- .4 **Authority Having Jurisdiction.** The School Board of Brevard County Florida Building Department is the jurisdiction having authority for building code compliance, unless otherwise provided in the Contract Documents. A School Board of Brevard County Building Permit is required to be issued before construction can commence, and will be furnished to the Construction Manager at no cost upon compliance with permit application requirements.

4.4 **PRECONSTRUCTION SERVICES**

- .1 **Preconstruction Scope, Design Phase** – The scope during project Design may include, but not be limited to:
 - a. The Construction Manager will prepare progress reports during the Pre-Construction Phase documenting value engineering, budget and scope issues.
 - b. Assist the Owner and the Architect-Engineer during the Scope Development, Preliminary Design, and Design Development phases in the evaluation of design options for the Project.
 - c. Construction Manager shall schedule at least one review meeting with the Owner, including the Owner's Educational Team, Owner's Designated Maintenance Supervisors, the Owner's Architect-Engineer, the Owner's Commissioning Agent (if applicable) to review the scope of the Project.
 - d. Develop with the Owner and Architect-Engineer applicable cost and time reducing design alternatives.
 - e. Coordinate any revisions to the Contract Documents with the Owner and the Owner's Architect-Engineer regarding Drawings and Specifications.
 - f. Establish the master project schedule identifying all different phases and all milestone items including the assessment of occupancy restrictions and limitations on construction activities during the school year.
 - g. Develop a project budget and ultimately a Guaranteed Maximum Price (GMP) based on the Documents and negotiations with the Owner.
 - h. Review and familiarize itself with all reports, surveys and tests concerning the condition of the Site.
 - i. Conduct field investigations to identify concealed conditions to be remedied.
 - j. Familiarize itself thoroughly with the progress design documents and provide value engineering recommendations and constructability reviews in all disciplines.
 - k. Review Construction Documents to help minimize scope-gaps, omissions and conflicts.
 - l. Prepare in CSI format, detailed estimates of probable cost of construction with updates.
 - m. Review the Project design to identify long-lead procurement items and equipment/materials which are eligible to be purchased under the Owner's ODP program.
 - n. Coordinate with the Architect-Engineer to finalize the Construction Documents and develop Bid Packages.

- o. Coordinate with the Architect-Engineer and prepare permitting applications and Agency submittal documents as required for the Project.
- p. Coordinate with the Owner's Commissioning Agent regarding the commissioning plan.

.2 Preconstruction Scope, Bidding and Advertisement Phase –

The Construction Manager shall make all reasonable efforts to obtain at least three (3) bids for each trade category of the work and shall submit documentation of the solicitation of bids to the Owner. The scope during the Bidding and Advertisement Phase may include, but not be limited to:

- a. Schedule and conduct Pre-Bid Conferences with the interested Subcontractors, Material Suppliers, and Equipment Suppliers.
- b. Assess conditions in the construction market in an effort to identify factors that will or may affect costs and time for completing the Project.
- c. Generate bidder interest in the local marketplace, identifying and reasonably encouraging bidding competition.
- d. Identify and solicit multiple bid packages that together will represent the entirety of the Work.
- e. Solicit, advertise, accept, review, and, based on written approvals by the Owner, award bids to qualified subcontractors, based on the bid packages identified. The Construction Manager will contract with all subcontractors, material suppliers and equipment suppliers necessary for the proposed construction works.
- f. Provide to the Owner along with the Guaranteed Maximum Price buy-out report, a summary indicating all subcontractor bids received, scope sheets for each bid package, General Conditions Cost Itemization, Exclusions, Allowances, Construction Manager's Fee, and a CPM Construction Schedule.

4.5 CONSTRUCTION AND POST-CONSTRUCTION PHASE SERVICES

.1 Scope. The scope of services during the Construction Phase and the Post-Construction Phase may include, but not be limited to:

- a. Construction Manager will coordinate with the Owner and school personnel to accommodate school related activities in areas of the campus not under construction.
- b. Construction Manager will coordinate with the Architect-Engineer and Owner to schedule and conduct Pre-Construction meetings with Subcontractors.
- c. Construction Manager will update and maintain the master project schedule, detailed construction schedules, submittal schedules, inspection schedules and occupancy schedules.
- d. Construction Manager will coordinate all work with surveyors, special consultants and testing lab services contracted by the Owner as required.
- e. Construction Manager will coordinate and schedule all required inspections prescribed in the building permit and Florida Building Code.
- f. Construction Manager will coordinate site construction management services including, but not limited to: (a) Owner progress and Subcontractor job site meetings, (b) maintain daily on site project log and schedule report, (c) oversee and document quality assurance testing and inspection programs, (d) monitor Construction Management staff and Subcontractor work performance for deficiencies, (e) maintain record copy of all contract documents, (f) coordinate Requests for Information (RFI) submittals and log, (g) oversee Contingency Use Requests (CUR) submittals and log, and (h) oversee Construction Management staff and subcontractor safety programs.
- g. Construction Manager shall provide to the Owner, a Monthly Project Report providing an accurate assessment of the current status of the Project and cost accounting indicating the status of the subcontract buyouts, contingency expenses, project expenses, accounts payable, forecasted and conformed Owner expense changes, and forecasted savings within the Guaranteed Maximum Price.

- h. Construction Manager will develop and implement procedures to accommodate Owner Direct Purchases so that Owner can take advantage of Owner's tax exempt status for all materials and equipment exceeding \$5,000.00, or an alternate threshold established by Owner. This includes identification, tracking, and coordination with Subcontractors.
- i. Construction Manager will coordinate with the Owner, the Owner's Architect-Engineer and the Owner's Commissioning Agent for the inspection(s) necessary to develop the Punch List prior to the issuance of the Certificate of Substantial Completion.
- j. Construction Manager will complete all Punch List items, including administrative close-out items, prior to Final Completion.
- k. Construction Manager will coordinate project close-out, start-up, training and transition to operation.
- l. Construction Manager will obtain and review all warranties, operations and maintenance manuals, project documentation and other such close-out documents.
- m. Construction Manager will coordinate with the Architect-Engineer to provide complete Project records including Project Manual and CAD drawings corrected to show all construction changes, additions, and deletions compared to the Construction Documents. Construction Manager shall furnish three (3) 24" x 36" printed sets and one electronic (.PDF format) set of as-built drawings to Owner, which are clearly marked "AS-BUILT DRAWINGS".
- n. Construction Manager will coordinate with the Owner to prepare the Certificate of Final Inspection.
- o. Construction Manager will coordinate and conduct an inspection of the project thirty (30) working days prior to warranty expiration and provide to Owner a written report specifying any warranty deficiencies which may exist. The warranty period shall be one year from the date of Substantial Completion, unless otherwise specified in the Contract Documents. The Owner may extend the warranty period in the event the Construction Manager does not conduct the inspection within the prescribed time period or the warranty deficiencies are not corrected and operationally tested.
- p. Construction Manager shall be responsible to ensure that instruction is provided in the operation of any equipment or system such as initial start-up, testing, adjusting and balancing.
- q. Construction Manager will timely coordinate with the Owner's Commissioning Agent as required to complete the commissioning process.
- r. Construction Manager will timely provide requested documentation and coordinate with the Owner's auditor to conclude the project audit and reconcile the final pay request.
- s. Construction Manager will ensure all District asset management protocols are followed including logging tagged assets that are taken out of service and tagging new assets as directed by the District staff. As work progresses, Construction Manager will create a log of retired and new assets.
- t. Construction Manager will return any overpayment to the Owner within twenty (20) days of completion of the post-construction audit.

4.6 PROJECT SITE SUPERVISION

- .1 **Approval.** Construction Manager will at all times, or at an alternative schedule with prior approval by Owner, maintain a competent representative on the Project Site during performance of the Work in the form of either a Project Manager or Site Superintendent, as approved by the Owner, to receive instructions and to act with authority for Construction Manager.
- .2 **Identification.** The Construction Manager shall furnish in writing to the Owner the name and qualifications of the Project Manager and/or Site Superintendent.
- .3 **Change.** Construction Manager's Project Manager and/or Site Superintendent will not be changed without the consent of Owner, except where Construction Manager's Project Manager and/or Site Superintendent proves to be unsatisfactory to Construction Manager or ceases to be in Construction Manager's employ.

4.7 PROJECT SCHEDULE

- .1 **Preparation.** Construction Manager, immediately after being awarded the Project Notice to Proceed, will prepare and submit to Owner a critical path progress schedule for the Work, hereinafter referred to as the Project Schedule or Schedule, including all Design Phases. The Project Schedule shall be prepared and provided in Microsoft Project format unless otherwise approved by the Owner.
- .2 **Schedule.** The initial schedule shall include all phases of Design Services, Construction Services, commissioning, long-lead procurement, shop drawings, and submittals, dates of commencement, substantial completion and final completion. The Construction Manager will upload the schedule to the Owner's Master Library Project account.
- .3 **Updates.** The Schedule after being approved by Owner's Project Manager will be updated by the Construction Manager monthly, or as directed by Owner based on Project term and complexity. The Construction Manager will upload all updates to the Owner's Master Library Project account.
- .4 **Failure to Comply.** If the progress of the Work does not meet the Schedule, Construction Manager shall submit a revised Schedule containing the revised sequencing, durations, and/or resources necessary to complete the Work, or designated portions thereof, by the date(s) contained in the original Schedule. Such revised Schedule shall be submitted within three (3) days of a request by Owner. Failure of Construction Manager to submit a revised Schedule with corrective actions sufficient to complete the Work, or designated portions thereof, by the date(s) contained in the original Schedule, or to initiate and maintain such corrective actions, may be deemed a default by Construction Manager under Article 13 of this Exhibit A for which Owner may assert any and all remedies provided for herein.
- .5 **Overtime.** The Construction Manager is responsible for managing the Schedule and as such the Owner will not be liable for any resulting claims for damages, delays, extras, accelerations, compaction, disruption, lost productivity, lost efficiency, overtime, supervision, additional labor or overhead expenses. The Owner will not pay premium overtime rates to the Construction Manager or Subcontractors in order to fulfill its obligation to complete the Work in accordance with the Schedule or within such other time limits as may be set forth in the Contract Documents unless approved in advance in writing, and as made necessary by circumstances beyond the control of the Construction Manager or its Subcontractors.

4.8 SHOP DRAWINGS, REQUESTS FOR INFORMATION AND OTHER SUBMITTALS

- .1 **Review by Construction Manager.** All Submittals will be reviewed, stamped with Construction Manager's approval and submitted to Owner's Architect Engineer within Ten (10) days of receipt by Construction Manager.
- .2 **Consequences of Approval.** Construction Manager's approval of a Submittal represents that Construction Manager and the Owner's Architect-Engineer has determined and verified all materials, field measurements quantities, and field construction criteria related to the Submittal, or will do so, and that Construction Manager has checked and coordinated the information contained within such Submittal with the requirements of the Work and of the Owner approved Contract Documents.
- .3 **Liability for Errors.** Construction Manager will not be relieved from responsibility for errors or omissions in Submittals by Owner's and/or, if applicable, the Owner's Architect-Engineer's approval of the Submittals.
- .4 **Revisions.** With regard to all resubmitted Submittals, Construction Manager will in writing direct specific attention to revisions or other deviations which are different from or in addition to those required by Owner and/or the Owner's Architect-Engineer on previous Submittals.

- .5 **Work Requiring Submittals.** Construction Manager will perform no Work requiring a Submittal until such Submittal is submitted and No Exceptions Taken by Owner and/or the Owner's Architect-Engineer. Any such Work performed without Architect-Engineer's approval will be at Construction Manager's sole risk.
- .6 **No Substitution.** No substitution of materials, equipment, articles or processes required specifically identified in the Contract Documents will be made without written approval of Owner's Project Manager.
- .7 **Approvals.** Samples of materials and mock-ups will be submitted for approval when specified in the Contract Documents and as identified in the Project Schedule.
- .8 **Equipment Manuals and Training.** Construction Manager will furnish to Owner, Owner's Architect-Engineer and Commissioning Agent no later than five (5) days prior to the date of Substantial Completion two (2) manual copies and one (1) electronic copy of schematic diagrams covering installations of all electrical, mechanical and building automation controls, operating instructions and maintenance recommendations for all machinery, equipment and systems purchased by Construction Manager and installed in the Project. The manuals shall be reviewed by the Owner's Architect Engineer and/or Owner's representative(s) and one (1) copy will be returned to the Construction Manager within five (5) working days. The Construction Manager shall then submit up to five (5) manual copies and one (1) electronic copy of the corrected manual to the Owner. The maintenance and operating instructions will be included within the equipment manuals and will state all information necessary for Owner to operate, use, maintain and service the equipment fully and efficiently. The Work will not be accepted for Final Completion until Owner has received such equipment manuals covering such Work. The Construction Manager will provide building system and equipment training to the Owner's designated representative at a mutually convenient time and location.
- .9 **Parts List.** Construction Manager will provide no later than the date of Substantial Completion a printed parts list for all items subject to replacement for all machinery, equipment and systems purchased by Construction Manager and installed in the Project.
- .10 **Start-up of Systems.** Construction Manager will be responsible for start-up of all systems and equipment and will have made sufficient allowances in the Contract Sum to cover time and personnel to perform a complete commissioning process as specified and to cover contingencies arising out of the start-up of individual systems, equipment and the total facility. Construction Manager will comply fully with each manufacturer's specifications and instructions. Systems and equipment specified to be furnished with manufacturer's supervision of start-up will be placed in operation only under such supervision.
- .11 **Document Control.** Construction Manager shall utilize the School Board's MasterLibrary™ cloud-based construction management software system for Project document control, including all document submittals referenced in Article 4 of this Exhibit A. The Owner will establish a Project website on <http://www.masterlibrary.com>. The Construction Manager will be given a user account with administrative capabilities to allow the creation of as many accounts as needed for the project. Accounts will be needed for all Construction Team members. Each user of the system will be required to have a unique e-mail address.

The website provides the following functionality using web based electronic forms:

1. Meeting Minutes
2. RFIs
3. Daily Reports
4. Transmittals
5. Submittals
6. Field Observations
7. Punch Lists
8. Project Correspondence

9. Memos
10. Field Orders
11. Change Orders/Proposals
12. File Storage

Use of the website will be mandatory for the Construction Manager, unless directed otherwise by the Owner. The Construction Manager shall use the website for the routine tasks including, but not necessarily limited to:

1. Generate RFIs.
2. Enter and track soft copy Submittals, MSDS's O&M Manuals etc.
3. Respond to Field Orders.
4. Provide Proposals.
5. Transmit daily progress reports (including Construction Manager work force and Subcontractor work forces, forecasts, issues encountered, etc.).
6. Enter and update Project activities (schedule).
7. Generate emails/correspondence.
8. Acknowledge receipt/comment on routine correspondence.
9. Transmit test reports.
10. Transmit applications for payment (as directed by Owner).
11. Transmit record documents.
12. Transmit closeout documents, etc.

4.9 **CLEANING UP**

- .1 **Clean Project Site.** At all times Construction Manager and its Subcontractors will keep the Project Site and related storage areas and public and private areas free from accumulations of waste materials or rubbish.
- .2 **Owner Right to Clean Up.** If for any reason, Construction Manager or any Subcontractor fails to completely clean up and remove its waste materials, rubbish and other materials at the Project Site to a level acceptable to the Owner, Owner may do so and the cost thereof will be charged to Construction Manager, through a deduction from the final pay application.

4.10 **RECORDS, DOCUMENTATION, NOTIFICATIONS**

- .1 **Records Maintained at Project Site.** Construction Manager will maintain at the Project Site copies of records of all documents relating to the Project, including all contracts, Submittals, permits, a current marked set of working Drawings and Specifications, including as-builts to facilitate the preparation of record drawings, subcontracts, orders for materials, equipment and/or supplies and governmental, commercial and technical standards and specifications. At a time prior to Substantial Completion, Construction Manager will deliver duplicates of such documents to Owner.

Construction Manager will be responsible for tagging assets with QR codes as construction progresses as directed by the Owner.

- .2 **Accounting Records.** Construction Manager will maintain cost accounting records relating to the Work in accordance with generally accepted accounting principles. Owner will have access to Construction Manager's accounting records at all reasonable times and Construction Manager agrees to make such changes to its system of keeping these records as Owner may reasonably request in writing. A third party audit will be conducted utilizing the referenced records and documentation in this Article.
- .3 **Progress Records.** Construction Manager will keep detailed records of the progress of the Project during all stages of construction in accordance with the Specifications and this Agreement. Construction Manager will also maintain a daily log of all events occurring on the Project Site or connected with the progress of the Project, a log pertaining to all

Requests for Information (RFI) submittals and a log for Contingency Use Request (CUR) submittals. Copies of the progress records and logs will be submitted monthly to Owner.

- .4 **Minutes of Meetings.** Construction Manager will prepare and distribute copies of minutes of meetings pertaining to the Project to Owner's Project Manager and all other interested parties. At least one bound volume of all minutes (design and construction) will be maintained by Construction Manager at the Project Site during Construction until Date of Final Completion of the Work. Items in the minutes will be numbered consecutively and grouped under divisions and sections similar to the organization of the Specifications.
- .5 **Preservation of Records.** Construction Manager will preserve such records for a period of five (5) years after final payment. Owner will have access to and the right to conduct examinations and audits of all such records at any time during such period. At the expiration of such period, Construction Manager, if requested by Owner, will turn over such records to Owner to be kept for such time as necessary for reproduction prior to return.
- .6 **Written Records.** All such records and reports will be written, accurate, in good order, current and show all changes made during performance of the Work.
- .7 **Communication Procedures.** Before the Work begins, complete procedures for communications between and among Owner and Construction Manager will be established to the satisfaction of Owner. In addition to maintaining records at the Project Site, the Construction Manager should expect to utilize the Owner's Master Library Project account as a primary communication tool among the Construction Team.
- .8 **Notification.** If, during the course of performance of the Work under the Agreement, Construction Manager or Subcontractor or any of their employees, encounter or become aware of any environmentally related issues including, but not limited to:
 - a. The release or substantial threat of release of a hazardous substance;
 - b. The discovery of materials, substances of unknown origins on or under the Site;
 - c. The discovery of any underground storage tank;
 - d. And/or similar occurrences;

Then Construction Manager or Subcontractor or such employee of Construction Manager or Subcontractor will immediately notify Owner's Project Manager in writing.

4.11 **WARRANTY OF WORK**

- .1 **Obligation to Correct Within One Year.** Construction Manager will, at no expense to Owner, correct any of the Work found to be defective or not in accordance with the Contract Documents at any time within one (1) year (or, in the case of items as to which a longer warranty period is set forth in the Specifications, within such longer period) after the Date of Substantial Completion of the Project Work. The Construction Manager will provide a two (2) year warranty on any and all Building Automation System components and will ensure the system is fully operational through all seasons. Systems that do not meet District design standards and/or are not fully functional in accordance with District standards will not be accepted. In any event, the warranty herein expressed will not be sole and exclusive and is additional to any other warranty express or implied. All such work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. The Owner may extend the warranty period in the event the Construction Manager does not fully correct and operationally test warranty deficiencies identified by the Owner.
- .2 **Warranty of Materials, Equipment and Software.** Warranties issued by Construction Manager and the manufacturers of machinery and materials, equipment and/or supplies, and software purchased by Construction Manager for use in the Project will:
 - a. Be collected by Construction Manager, indexed and bound;
 - b. Be submitted to Owner no later than seven (7) days prior to the Date of Substantial Completion of the Work; and

- c. Be issued or assignable by their terms to Owner and in the latter case will be transferred to Owner.
 - d. Will commence on the date of the Project's Substantial Completion.
- .3 **Warranty Implementation Plan:** The Construction Manager shall develop and administer a Warranty Implementation Plan in a format approved by the Owner. The plan shall include but not be limited to:
- Identifying roles and responsibilities of all personnel associated with the warranty process including points of contact and continuously available telephone numbers as applicable within the Construction Manager's organization, subcontractors, manufacturers or suppliers.
 - Listing of all warranty items including systems and equipment, in a format acceptable to the Owner, that includes:
 - Name of the item
 - Model and serial number
 - District asset tag
 - Photograph(s) of asset and QR Code
 - Installation location (nearest room number, building identification, as applicable)
 - Name and contact information of manufacturer or supplier as applicable
 - Spare parts source
 - Terms of the warranty
 - Cross reference to warranty certificate
 - Summary of maintenance procedures required during warranty period
 - Cross reference to Operations & Maintenance Manual section
 - Organization, names and phone numbers of continuously available warranty service personnel
 - Expected response time
- .4 **Maintaining the Learning Environment:** The Construction Manager expressly acknowledges that an immediate response with appropriate personnel (which may include multiple trades) is required for warranty issues affecting the learning environment, including, but not limited to, air conditioning, electrical, plumbing, building envelope and safety issues. In the event the District personnel must respond to maintain the learning environment, the warranty shall remain in full force and effect. Within 24 hours of the District's response, the Construction Manager may request the Owner provide a written summary of all work performed.
- .5 **Survival.** The representations and warranties herein will survive the execution and delivery of the Agreement and the Date of Final Completion of the Work.
- .6 **Default or Breach of Warranty.** Failure of Construction Manager to perform in accordance with any of the warranties in this Article will be considered a default or breach by Construction Manager hereunder and give rise to a right of termination for cause and the exercise of any and all other rights and remedies available to Owner under Article 12 of this Exhibit A and by Law.

ARTICLE 5 – SUBCONTRACTORS

5.1 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

- .1 **List of Subcontractors/Sub-subcontractors.** The Construction Manager, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work at a time agreed upon by the Owner. The Owner may reply within 14 days to the Construction Manager in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.
- .2 **Reasonable Objection.** The Construction Manager shall not contract with a proposed person or entity to whom the Owner has made reasonable objection. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has made reasonable objection. If the Owner has reasonable objection to a person or entity proposed by the Construction Manager, the Construction Manager shall propose another to whom the Owner has no reasonable objection.
- .3 **Substitution.** The Construction Manager shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.
- .4 **Self-Performance of the Work:** The Construction Manager may propose to self-perform work subject to approval by the Owner. For each trade the Construction Manager proposes to self-perform, the Owner may require the Construction Manager to solicit competitive bids prior to approval by the Owner.
- .5 **Utilizing a Related Party or Subsidiary Subcontractor:** The Construction Manager must disclose the use of a Related Party or Subsidiary Subcontractor, both of which are subject to approval by the Owner. For each trade the Construction Manager proposes to utilize a Related Party of Subsidiary Subcontractor, the Owner may require the Construction Manager to solicit competitive bids prior to approval by the Owner.

5.2 **SUBCONTRACTUAL RELATIONS**

- .1 **Subcontract Requirements.** By appropriate written agreement, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Construction Manager, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by the Contract Documents, has against the Owner. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractor are required to comply with Article 10 Protections of Persons and Property of this Exhibit A. Subcontractors shall be similarly required to make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- .1 **Assignability.** Each subcontract agreement for a portion of the Work is assigned by the Construction Manager to the Owner, provided that
 - a. Assignment is effective only after termination of the Contract by the Owner for either cause or convenience pursuant to Article 12 of this Exhibit A and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Construction Manager in writing; and
 - b. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
 - c. When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Construction Manager's rights and obligations under the subcontract.
- .2 **Suspended Work.** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in direct costs resulting from the suspension and that are not due to any breach of contract or negligence of the Subcontractor or its employees.
- .3 **Successor.** Upon such assignment to the Owner under this Article of this Exhibit A, the Owner may further assign the subcontract to a successor Construction Manager or other entity.
- .4 **Duties.** Any assignment made under this Article shall not relieve the Construction Manager of its duties and responsibilities under this Contract nor shall any assignment be deemed a waiver by the Owner of any action or claims which it could assert against the Construction Manager.

5.4 OWNER PAYMENTS TO SUBCONTRACTORS

- .1 **Default.** In case of any default hereunder by the Construction Manager, that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount so paid the Subcontractor shall be deducted from the payments to the Construction Manager.
- .2 **Payment Obligation.** Nothing contained herein shall create any obligation by the Owner to make any payments to any Subcontractor and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 6 – CONTRACT TIME

6.1. REQUIREMENTS

- .1 **Time of the Essence.** Owner and Construction Manager mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- .2 **Start and Expeditious Completion.** Construction Manager will begin the Work per the Project Notice to Proceed, provide adequate staffing for the Design phases and man the Project Site with adequate forces during Construction to achieve the Date of Substantial Completion of the Work and Date of Final Completion of the Work within the Schedule identified in the Guaranteed Maximum Price (Exhibit C). The Project Schedule is identified in the attached Exhibit E (to be provided by the Construction Manager).
- .3 **Liquidated Damages.** Construction Manager understands that if Substantial Completion or Final Completion are not attained by the Scheduled Completion Dates, Owner will suffer damages which are difficult to determine and accurately specify. Construction Manager agrees that Construction Manager shall pay Owner the amounts set forth in the Project Guaranteed Maximum Price (Exhibit C) as liquidated damages for each day that Substantial Completion extends beyond the Substantial Completion Date and for each day that Final

Completion extends beyond the Final Completion Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion.

6.2 DELAYS AND EXTENSIONS OF TIME

- .1 **Delays.** If the Construction Manager is materially delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Owner's Architect-Engineer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes not caused by wrongful or unlawful acts of Construction Manager, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Construction Manager control; or by other causes that the Owner determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine.
- .2 **Exclusive Remedy.** Except as provided in Article 11.1.1 (concealed conditions) of this Exhibit A, an extension of time as defined above, shall be the Construction Manager's exclusive remedy in the event of such a delay, no matter how or by whom caused. Construction Manager further specifically acknowledges that it shall have no claim for increase in the Contract Sum, Construction Manager's Construction Fee, use of Contingency, or damages of any kind because of any delays whatsoever to all or any part of the Work whether foreseen or unforeseen, and whether caused by any person's hindrance or active interference. Claims relating to time shall be made in accordance with applicable provisions of Article 13.
- .3 **Owner FFE Delivery.** The Owner will schedule furniture and equipment deliveries based on the construction schedule in consultation with the Construction Manager. The Construction Manager shall be responsible for all costs incurred by the Owner for storage, double handling, re-shipping, and extended general conditions costs of delayed furniture and equipment installations due to the Construction Manager's failure to comply with the schedule. The Construction Manager acknowledges that timely FFE delivery is necessary to open the school and will ensure proper coordination to accommodate FFE delivery.

6.3 FORCE MAJEURE

- .1 **Force Majeure.** In the event that either Owner or Construction Manager is delayed or hindered in or prevented from performance of any act required herein by reason of unavoidable labor dispute, unavoidable inability to procure materials, failure of power or failure of power not resulting from the Owner's or Construction Manager's actions or failure to act as required under the Agreement, restrictive governmental Laws enacted or taking effect after the Date of Commencement of the Work, riots, insurrections, war, fire, adverse weather conditions not reasonably anticipated, other unavoidable casualties or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the Contract Documents or any other Act of God, then performance of such acts will be excused for the period of the delay and the period for the performance of any such acts will be extended for an equivalent period.
- .2 **Persistence of Force Majeure.** If an act or event of force majeure continues for fifteen (15) consecutive days or longer, Owner will have the right to immediately terminate the Agreement upon written notice to Construction Manager in accordance with Article 12 of this Exhibit A.

ARTICLE 7 – CONTRACT PRICE

7.1 GUARANTEED MAXIMUM PRICE (GMP)

- .1 **Guaranteed Maximum Price.** The Guaranteed Maximum Price, including authorized adjustments thereto, is the compensation or total (or maximum, as the case may be) amount payable by Owner to Construction Manager for the performance of the Work under the

Project Contract Documents as identified in the Project Guaranteed Maximum Price (Exhibit C). The Guaranteed Maximum Price shall include the cost of the Construction Manager Fee and the Cost of the Work (General Conditions, Subcontracted Costs and other Direct Costs) as defined herein.

- .2 **Truth-in-Negotiation.** The Construction Manager certifies that the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of execution of each Project of which this certificate is a part. The original price and any additions thereto shall be adjusted to exclude any sums by which the Owner determines the Project amount was increased due to inaccurate, incomplete or non-current wage rates, labor burden rates and other factual unit costs (including wage rates and labor burden rates that include amounts that are not considered reimbursable under the terms of the Agreement) and that such original Project adjustments shall be made within one year following the end of the Agreement.
- .3 **GMP Established Upon Approval of Project.** Construction Manager guarantees that it shall not exceed the GMP as identified in the Guaranteed Maximum Price (Exhibit C) for the Project. Construction Manager does not guarantee any specific line item provided as part of the GMP, but will provide a line item reconciliation at the conclusion of the Project, at the time of the submission of the Final Payment Application, reconciling the final Schedule of Values to the Construction Manager's final job cost detail by line item. The Construction Manager agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as the basis for the GMP for each specific Project shall be identified in Exhibit C.
- .4 **Contingency.** Construction Manager shall include in the GMP an agreed upon sum as the Contingency, which is included for the purpose of defraying the risks associated with cost estimates based on incomplete construction documents, estimating errors, code compliance issues, and unforeseen circumstances relating to the procurement of Trade Contracts. Use of contingency is at the sole discretion of the Owner. A Contingency Use Request (CUR) will identify the cost of work based on time and material supported by invoices and daily time records with a not-to-exceed limit. Lump sum or unit prices Contingency Use Requests may be accepted at the Owner's sole discretion.

Upon completion of the Construction Documents, or a portion thereof, Construction Manager shall obtain bids for the Work. If Trade Contracts are executed below the applicable line items in the GMP, the surplus will be added to the Contingency; if Trade Contracts are executed above the applicable line item in the GMP, the deficiency will be taken from the Contingency. However, such events shall not be cause to increase or decrease the GMP. Construction Manager shall execute 100% of the Trade Contracts within forty-five (45) days upon receipt of Owner approval of the Guaranteed Maximum Price (Exhibit C) and related Notice to Proceed. If 100% of the Trade Contracts have not been executed within forty-five (45) days, maximum allowances agreeable to Owner shall be established for those portions of the Work for which Trade Contracts have not been executed.

Upon request by Construction Manager and approval by Owner (at the Owner's sole discretion), the Contingency may be used for design errors and omissions, scope gaps in the Trade Contracts and unforeseen conditions in the Work. Owner may use the Contingency to increase the scope of Work if the increased Work will not cause the schedule to be extended or the GMP to be exceeded. Use of the Contingency shall increase Construction Manager fees but not General Conditions. If any funds remain in the Contingency at the completion of the Project, the GMP shall be reduced by Change Order to return all unused Contingency to the Owner.

- .5 **Value Engineering Savings.** Value engineering savings, proposed by Construction Manager and approved by Owner, shall be added to the Contingency.
- .6 **Final GMP.** At the completion of the Project, the Final GMP shall not include unused Contingency, Sales Tax Savings, or Owner-direct purchases.

7.2 CONSTRUCTION MANAGER'S PRE-CONSTRUCTION PHASE

- .1 **Compensation.** The pre-construction phase compensation shall be not-to-exceed based on the required effort-hours and the audited hourly rate schedule (Exhibit D).
- .2 **Format.** The proposed pre-construction phase proposal shall be set forth in writing in a format acceptable to the Owner for approval and upon acceptance made a part of this Agreement (Exhibit F) by issuing a Purchase Order.
- .3 **Pre-Construction Commencement.** The Pre-Construction Phase shall commence upon the issuance of a Notice to Proceed and Purchase Order.

7.3 CONSTRUCTION PHASE FEE - GENERAL

- .1 **Fee to be Negotiated.** The Construction Manager's Construction Phase Fee for the Project shall be negotiated.
- .2 **Fee on Contingency.** The Construction Manager's Construction Phase Fee rate established in Article 7.3.1 will be applied to the contingency as it is used. Fee will be paid only when the initial contingency amount that was not previously subject to fee is used for project expenses.
- .3 **Fee on Changes in the Contract Sum.** The Construction Manager's Construction Phase Fee established in Article 7.3.1 will be applied to any changes in the Contract Sum.
- .4 **Format.** The Construction Phase Fee shall be set forth in the Guaranteed Maximum Price Amendment (Exhibit C) for approval and upon acceptance made a part of this Agreement by issuing a Purchase Order.

7.4 CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE - ELEMENTS

- .1 **Home/Branch Office Staff Expenses.** The cost of its home or branch office employees or consultants not at the Project sites, including the cost of all pension contributions, hospitalizations, staff bonuses, vacations, medical insurance assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.
- .2 **Home/Branch Office Expenses.** General operating expenses of the Construction Manager's principal and branch offices other than the field office.
- .3 **Capital Expenses.** Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .4 **Overhead and Profit.** Overhead, profit, or general expenses of any kind, except as may be expressly included in Article 7.7 of this Exhibit A.
- .5 **Travel.** All travel and per diem costs of Construction Manager's employees and consultants, except as may be expressly included in Article 7.7 of this Exhibit A.
- .6 **Estimating.** The cost of estimating services which may be required during the Construction Phase in locations other than the Project Site.
- .7 **Miscellaneous Principal/Branch Office Expenses.** Expenses incurred at principal or branch offices such as long distance telephone calls, postage, office supplies, and similar items in connection with the Work, except as may be expressly included in Article 7.7 of this Exhibit A.
- .8 **Warranty Period.** All cost incurred during the warranty period after construction.

- .9 **Commissioning Period.** All post-construction cost incurred during the Project commissioning.
10. **Audit.** All post-construction cost incurred during the Project audit.

7.5 **ADJUSTMENT IN THE CONSTRUCTION PHASE FEE**

- .1 **Fee Increase.** The Construction Manager shall not be entitled to additional Fee for delays in the Work caused by the Owner. The Construction Manager may receive additional General Conditions for verifiable increased expenses if delays in the Work caused by the Owner result in a delay of the Final Completion Date, as determined by the Owner.

7.6 **GENERAL CONDITIONS**

- .1 **General Condition Costs.** The items identified as General Condition costs shall be directly related to the Project and be proposed by the Construction Manager in the Guaranteed Maximum Price (Exhibit C) for approval by the Owner. The General Condition costs may include at the discretion of the Owner, but not be limited to, Construction Manager's direct labor and supervisory/administrative personnel engaged in the performance of the Work at the Project Site, job trailer and utilities, staff vehicles and fuel, cell phones, temporary utilities, select office furniture, security provisions, safety items, temporary toilets, permanent utility connection fees, barriers, select equipment rental, cleaning and dumpsters, insurance and bonds. The General Condition Costs upon acceptance will be made a part of this Agreement by the issuing of a Purchase Order and reference.

The General Condition costs shall be a Not to Exceed Sum and shall include select items identified as part of the Cost of the Work in Article 7.7 of this Exhibit A. The specific items comprising the General Conditions shall be detailed to the extent required by the Owner for evaluation and be an attachment to the Guaranteed Maximum Price (Exhibit C). A third party will audit the Cost of the Work and related General Condition costs prior to Final Payment.

7.7 **COST OF THE WORK**

- .1 **Cost of the Work.** The term Cost of the Work shall mean costs, both General Condition and direct construction costs, reasonably incurred by the Construction Manager in the proper performance of the Work.
- .2 **Components.** The Cost of the Work shall include only the following:
 - a. Wages of direct employees of Construction Manager performing the Work at the Site or, with Owner's agreement in writing, at locations off the Site. The Owner will not reimburse components of Labor Burden that are not normal and appropriate. Normal and appropriate components include actual costs of Payroll Taxes (FICA, SUTA, FUTA), Insurance (health, life, dental, disability), Retirement Plan, Workers Compensation (blended rates are not acceptable – reimbursement will be based on the actual rate for each person charging to the project and shall include modifier and discounts). The Owner's target for Labor Burden is less than forty percent (40%). Labor Burden components which will not be reimbursed include, but are not limited to, bonuses, excessive pension/profit sharing cost (not to exceed 8% of qualifying wages), club dues, auto, training/seminars, uniforms, administrative support.
 - b. Payments properly made by Construction Manager to Subcontractors for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors.
 - c. Wages or salaries of Construction Manager's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site with the prior written approval of the Owner.
 - d. Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

- e. Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Construction Manager, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
 - f. Costs of removal of debris and waste from the Project Site.
 - g. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
 - h. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Construction Manager at the Site, whether rented from Construction Manager or others, and incurred in the performance of the Work.
 - i. Premiums for insurance and bonds required by this Agreement. Owner will not reimburse components of General Liability or Professional Liability Insurance that are not direct costs of insurance for the Project. If any component of insurance premiums is self-insured, the cost must be based on actual costs or actuarially determined estimates. The Construction Manager will need to disclose such to the Owner, and provide the basis upon which such costs are allocated to the Project. Components that will not be reimbursed include, but are not limited to, reserves for deductibles, coverage not related to the Project (pollution insurance, kidnap & ransom insurance, director's liability insurance, others as determined by Owner) and administration. Construction Manager shall disclose if they are self-insuring any portion of their reimbursable insurance costs.
 - j. All fuel and utility costs incurred in the performance of the Work.
 - k. Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work (except where sales tax is credited to Owner).
 - l. Costs for permits, royalties, licenses, tests and inspections incurred by Construction Manager as a requirement of the Contract Documents.
 - m. Deposits which are lost, except to the extent caused by Construction Manager's negligence.
 - n. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
 - o. Vehicle costs to be limited to reasonable lease, maintenance, gas and insurance expenses as determined by Owner.
 - p. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
 - q. Costs related to completion of all project close-out requirements including but not limited to:
 - 1. Equipment Manuals (Section 4.8.8)
 - 2. Owner Training (Section 4.8.8)
 - 3. Parts List (Section 4.8.9)
 - 4. Start Up (Section 4.8.10)
 - 5. Project Records including As Builts (Section 4.10.1)
 - 6. Warranty of Materials, Equipment and Software (Section 4.11.2)
- 3. Reimbursables at Cost.** The following items will be reimbursed at cost and will not be subject to any percentage markup (fee) for overhead and profit:
- a. Sales and use taxes
 - b. Performance and labor and material payment bond premiums;
 - c. Permit fees; and
 - d. Insurance premiums.
- 4. Audit.** The Owner will engage a third party auditor to perform an audit of rates anticipated to be components of the Cost of the Work to establish agreed upon rates prior to

commencement of the Project, which will be incorporated into the Agreement as Exhibit D and utilized in the development of the Guaranteed Maximum Price.

7.8 **NON-REIMBURSABLE COSTS**

- .1 **Components.** The following shall be excluded from the Cost of the Work and are recognized in this Agreement as part of the Construction Manager's Fee:
 - a. Overhead and general expenses, except as provided for in Article 7.7 of this Exhibit A, or which may be recoverable for changes to the Work.
 - b. Costs incurred by Construction Manager in repairing or correcting defective, damaged or non-conforming Work, unless such defects, damage or non-conformances are not caused by the Construction Manager, Sub-Contractors or Suppliers.
 - c. Costs associated with Construction Manager's staff bonuses, profit sharing/pension costs in excess of 8% of qualifying wages, incentive compensation, staff training, uniforms, warranty costs and unsupported costs.
 - d. Any costs not specifically and expressly described in Article 7.7 of this Exhibit A.
 - e. Software expenses unless specific to the Project and previously approved by Owner.
 - f. Rental of Construction Manager owned equipment and tools unless previously approved by Owner.
 - g. Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

ARTICLE 8 – PAYMENTS

8.1 **APPLICATION FOR PAYMENT**

Each Application for Payment shall constitute a certification and representation by Construction Manager to Owner that the construction has progressed to the point indicated and the quality of the Work covered by the application is in accordance with the Contract Documents

- .1 **Schedule of Values.** Before submitting its first Application for Payment to Owner and/or the Owner's Architect-Engineer, Construction Manager will submit a Schedule of Values based upon the Project Guaranteed Maximum Price (Exhibit C) allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This Schedule of Values, unless objected to by Owner or the Owner's Architect-Engineer, will be used as the basis for Construction Manager's Application for Payment.
- .2 **Itemized Application for Payment.** Construction Manager will submit to Owner on the twenty-fifth (25th) day of each month beginning with the first month after approval of the Project Guaranteed Maximum Price (Exhibit C) and related Notice to proceed an itemized Application for Payment, in compliance with the approved Schedule of Values, notarized if required, supported by such data substantiating Construction Manager's right to payment as Owner may require, but in each case less the total of payments previously made, and less amounts properly withheld. The forms to be utilized shall be the Owner's established Application and Certificate for Payment and related Continuation Sheet.
- .3 **Construction Manager Fee.** The amount of Construction Manager Fee to be included in Construction Manager's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Construction Manager's Fee.
- .4 **Materials at Project Site.** Payments will be made on account of materials or equipment not yet incorporated in the Work but delivered, suitably stored and protected at the Project Site.
- .5 **Materials Off Project Site.** Payments will not be made for materials or equipment stored for the Project at some other location.
- .6 **Transfer of Title.** Title of all Work, materials and equipment covered by an Application for Payment will pass to Owner either by incorporation in the Work or upon the receipt of

payment by Construction Manager, whichever occurs first, and will be free and clear of all liens, claims, security interests or encumbrances. Construction Manager will have no property interest in Work, materials and equipment, including without limitation, stored materials and equipment, for which title has passed to Owner.

- .7 **Payment.** After review of the Application for Payment, Owner will make payment within twenty-five (25) Days after approval or, if Owner does not agree with the Application for Payment, it will promptly so notify Construction Manager in writing. Owner will withhold payment for only those items in dispute; undisputed items will be paid in accordance with the Agreement. If Owner fails to pay Construction Manager undisputed amounts when such amounts are due, Construction Manager may, upon ten (10) days written notice to Owner, suspend performance of the Work on the unpaid Work or portion(s) thereof until payment has been received.
- .8 **Change Orders.** Application for Payments will show agreed upon Change Orders as separate itemized line items for payment, including the percent of completion of the Change Order, the amounts of previous Application for Payments, retainage and payments for the Change Order.
- .9 **Payment to Subcontractors.** Upon receipt of payment from Owner, Construction Manager will promptly pay each Subcontractor (provided such Subcontractor has not been paid previously) as required by Section 287.0585, F.S. within seven (7) working days from receipt the amount to which said Subcontractor is entitled out of the amount paid to Construction Manager on the account of such Subcontractor's work.
- .10 **Payments in Trust.** Notwithstanding the foregoing, payments received by Construction Manager will be held in trust for the benefit of all Subcontractors, and others claiming a right to payment from Construction Manager out of the Contract Sum. Construction Manager agrees that Construction Manager will not have any property interest in payments made by Owner except for the balance in excess of all amounts owed to Subcontractors and other claimants.
- .11 **Notice.** If Owner decides to withhold payment of all or part of an invoice, Owner will promptly notify Construction Manager in writing. The notice will include specific reasons for the withholding of payment.
- .12 **Claims.** If Construction Manager and Owner cannot agree on a revised amount, Construction Manager may submit a Claim.
- .13 **Revocation of Prior Approval.** Owner may also nullify in whole or in part any prior approval on the basis of subsequently discovered evidence of defective Work not remedied, probable third party claims, failure of Construction Manager to pay its Subcontractors or others, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, Construction Manager damage to Owner, reasonable evidence that the Work will not be completed within the Project Schedule or persistent failure to carry out the Work in accordance with the Contract Documents. As soon as the above grounds are removed, payment will be made for the amounts withheld.

8.2 RETAINAGE ON PROGRESS PAYMENTS

- .1 **Initial Retainage Amount.** Owner shall withhold from each progress payment made to the Construction Manager five (5) percent of the payment as retainage. Retainage shall not be held on Owner Direct Purchases.
- .2 **Owner's Right to Reduce Retainage.** The Owner may release at any point all, or any portion of any retainage withheld which is attributable to the labor, services, or materials supplied by the Construction Manager or by one or more subcontractors or suppliers. If the Owner's retainage payment under this subsection is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers the Construction Manager shall timely remit payment of such retainage to those subcontractors and suppliers.

8.3 SUBSTANTIAL COMPLETION

- .1 **Notification.** As soon as Construction Manager considers that the Work, or a designated portion thereof which Owner has previously indicated Owner will accept, is Substantially Complete, Construction Manager will prepare for submission to Owner and/or Owner's Architect-Engineer a notice that Construction Manager believes that the Work is Substantially Complete, which will include a punch list of items to be completed or corrected ("Punch List").
- .2 **Construction Manager Responsibility.** The Construction Manager shall, in cooperation with the Owner and the Owner's Architect-Engineer, develop the list of items and the estimated cost to complete each item on the list to render the work complete (the Punch List). The Punch List must include all close out items that have not been previously transmitted to the Owner, including but not limited to:
 - a) Equipment Manuals (Section 4.8.8)
 - b) Owner Training (Section 4.8.8)
 - c) Parts List (Section 4.8.9)
 - d) Start Up (Section 4.8.10)
 - e) Project Records including As Builts (Section 4.10.1)
 - f) Warranty of Materials, Equipment and Software (Section 4.11.2)

The failure to include any items on the Punch List does not alter the responsibility of Construction Manager to complete all Work in accordance with the Contract Documents.

- .3 **Inspection.** Upon receipt of a completed Punch List, the Owner and/or Owner's Architect-Engineer will inspect the Work or designated portion thereof within five (5) business days to determine if Substantial Completion of the Work has been achieved, as defined in the Contract Documents, and to verify the accuracy and completeness of the Punch List.
- .4 **Certificate of Substantial Completion.** If Owner and/or Owner's Architect-Engineer agrees with Construction Manager that the Substantial Completion of the Work has been met, Construction Manager will then prepare a "Certificate of Substantial Completion" which will set forth the Date of Substantial Completion of the Work, will state the responsibilities of Owner and Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance, and will fix the time within which Construction Manager will complete the items on the Punch List.
- .5 **Retainage.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall within twenty (20) business days release to Construction Manager all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the 150 percent of the estimated cost to complete the items on the Punch List. Liquidated Damages and other damages for which Owner determines Construction Manager is liable may be separately assessed against the Construction Manager as applicable.
- .6 **Copies.** Owner will receive a copy of the Certificate of Substantial Completion with Construction Manager's written acceptance of the responsibilities assigned to Construction Manager in such Certificate of Substantial Completion.

8.4 **FINAL PAYMENT**

- .1 **Final Invoice.** When Construction Manager believes that the Work is ready for Final Inspection and acceptance, Construction Manager will prepare the Final Pay Application and send it to Owner and/or Owner's Architect-Engineer along with Construction Manager's statement that, in its opinion, the Work is complete.

- .2. **Inspection.** Owner and Construction Manager will promptly make an inspection, and if Owner finds the Work acceptable under the Contract Documents and all the terms and conditions of the Contract Documents have been fulfilled, the date of such inspection will be the Date of Final Completion of the Work.
- .3. **Documentation Prior to Payment.** Neither the final payment, nor payment of any remaining retained percentage will be made to Construction Manager until it submits to Owner:
 - a. A sworn or notarized affidavit that all payrolls, bills for materials and equipment, all charges by Construction Managers and Subcontractors and other indebtedness connected with the Work for which Owner and its property might in any way be responsible, have been paid or otherwise satisfied;
 - b. Consent to final payment by Construction Manager's Surety Company; and
 - c. All other data required by Owner establishing payment or satisfaction of all such obligations, including, but not limited to, close-out documentation, receipts, releases, and waivers of lien arising out of and required under the Agreement.
 - d. All other data required by the third party auditor.
 - e. The Owner will submit the Final Invoice to its third-party auditor. Construction Manager will expeditiously cooperate with the Owner's third-party auditor to complete the post-construction audit.
- .4. **Final Payment.** Owner will pay the final invoice in accordance with Article 8.1.7 of this Exhibit A. Final payment received by Construction Manager will be held in trust for the benefit of all Subcontractors and others claiming a right to payment from Construction Manager out of the Contract Sum. Construction Manager agrees that Construction Manager will not have any property interest in payments made by Owner except for the balance in excess of all amounts owed to Subcontractors and other claimants.

Final payment may be made prior to completion of the commissioning process and prior to completion of the post-construction audit. In the event of an overpayment, the Construction Manager shall repay the Owner within twenty (20) business days.
- .5. **Certificate of Final Inspection.** Prior to release of final payment, the Certificate of Final Inspection (Florida Department of Education document OEF 209) as prepared by the Construction Manager and signed by the Building Official and will require approval by the School Board.
- .6. **No Waiver by Payment.** It is mutually agreed that no payment (including final payment) under the Contract Documents will be evidence of the performance by Construction Manager under the Agreement, either wholly or in part.
- .7. **No Waiver by Use.** Neither the partial nor the entire use or occupancy of the Project by Owner, will constitute an acceptance of any Work not in accordance with the Contract Documents.
- .8. **No Waiver by Inspection.** Neither inspection by Owner or by any of his duly authorized representatives, nor any order, measurement or certificate by Owner will constitute a waiver of any of Owner's rights under the Agreement.
- .9. **Waiver by Construction Manager.** The acceptance of final payment by Construction Manager will constitute payment in full of the contract sum and a waiver of all claims by Construction Manager except those previously made in writing, in accordance with the Contract Documents and identified by Construction Manager in writing as unsettled at the time of the final invoice.

8.5 PROJECT MANAGEMENT INFORMATION SYSTEM

- .1 **Cost Control System.** Construction Manager shall provide sufficient timely (monthly) data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the Guaranteed Maximum Price.
- .2 **Project Accounting System.** This cost control system will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site elements.
 - a. **Costs Status Report** - states the budget, estimate, and base commitment (awarded contract and purchase orders) for any change given or budget item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the Work.
 - b. **A Payment Status Report** - showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained amount, and the balance remaining. A summary of this report shall accompany each pay request.
 - c. **Owner Direct Purchases** - showing Owner direct purchase commitments, payments, sales tax savings, balance to be paid, deductive change order reference and pay application line reference.

8.6 INTEREST

- .1 **Interest.** Any monies not paid when due to either party under this Agreement shall not bear interest except as may be required by Section 218.70 et. seq., Florida Statutes, The Florida Prompt Payment Act.

ARTICLE 9 – CHANGES IN THE WORK

9.1 CHANGE ORDER

- .1 **Change Order.** A Change Order is a written order to Construction Manager, signed by Owner, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or an adjustment in the Project Schedule. No change in the Contract Sum or the Project Schedule will be effective unless a Change Order has been signed by Owner. Construction Manager, when requested by owner, shall prepare Change Order documentation, including that required by the most recent edition of SREF – State Requirements of Educational Facilities, Owner’s Policies and the Agreement.

9.2 OWNER ORDERED CHANGES

- .1 **Owner Ordered Changes.** Without invalidating the Agreement, Owner may order changes in the Work within the general scope of the Agreement, inclusive of additions, deletions or other revisions, with the Contract Sum and/or the Project Schedule being adjusted accordingly, if necessary.
- .2 **Authorization for Changes.** All such changes in the Work must be authorized by a Change Order and must be performed in accordance with the Contract Documents.
- .3 **Change Directive.** If Owner and Construction Manager are unable to agree on the need for a change, the existence of a change, the scope of a change or compensation for a change, Owner may direct the Construction Manager in writing to proceed with the Work as changed ("Change Directive"), and Construction Manager will proceed as directed. If a Change Directive is issued, the Change Directive will specify one of the methods of compensation set forth below and will state the schedule impact, if any. If Construction Manager disagrees with the method or amount of compensation or Project Schedule impact, Construction Manager will file a notice of claim.

9.3 MINOR CHANGES TO THE WORK

- .1 **Owner Project Manager's Authority.** The Owner's Project Manager has the authority to order minor changes in the Work not involving adjustments in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Owner and shall be binding on the Owner and Construction Manager.

9.4 ADJUSTMENTS TO CONTRACT SUM

- .1 **Cost/Credit for Changes.** The cost or credit to Owner resulting from a change in the Work will be determined in one or more of the following ways, as selected by Owner:
 - a. By mutual acceptance of a lump sum itemized and supported with sufficient data to permit evaluation;
 - b. By unit prices stated in the Contract Documents or subsequently agreed upon with an Owner established not-to-exceed limit; or
 - c. By time and material supported by invoices and daily time records with an Owner established not-to-exceed limit.
- .2 **Non-Reimbursables.** Unless the change in the Work is specifically approved by Owner in writing, the following items will not be reimbursed by Owner and are not subject to any markup for overhead, profit or fee:
 - a. Salaries, expenses or other compensation of the Construction Manager's officers, executives, general managers, designers, Architects, Engineers, drafting staff, general superintendents, estimators, auditors, accountants, purchasing and contracting agents, expeditors and other employees working in or out of Construction Manager's primary/branch offices;
 - b. Salary of Construction Manager's Project Manager, other field office personnel salaries, utilities and telephone, temporary toilet facilities, trash removal and similar services, and safety equipment;
 - c. General and administrative expenses of Construction Manager's business, including, but not limited to, the cost of insurance as required by the Contract Documents;
 - d. Construction Manager's capital expenses including, but not limited to, interest on Construction Manager's capital employed for the Work;
 - e. Costs due to the negligence of Construction Manager, any Subcontractor, anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, including but not limited to, the correction of defective Work;
 - f. Use of Construction Manager's equipment such as office and material trailers and shacks, pick-up trucks, automobiles, etc.;
 - g. Costs in excess of the Guaranteed Maximum Price;
 - h. Small tools and consumables which include hand and power tools normally in a field gang box for each trade employed on the Project; and
 - i. Drayage services performed by Construction Manager's office personnel.
- .3 **Reimbursables at Cost.** The following items, if approved by the Owner as part of the Change in the Work, will be reimbursed at cost and will not be subject to any percentage markup for overhead and profit:
 - a. Sales and use taxes;
 - b. Performance and labor and material payment bond premiums;
 - c. Permit fees; and
 - d. Insurance premiums.
- .4 **Reimbursable Field Costs.** The following direct field costs, if approved by the Owner as part of the Change in the Work, will be reimbursed at cost:
 - a. Straight time wages for designers, Architects, Engineers, drafting staff, apprentices, journeymen, sub-journeymen, foremen and general foremen;

- b. Fringe benefits based on payroll;
 - c. Payroll insurance;
 - d. Payroll taxes up to the maximum annual amount for each employee;
- .5 **Reimbursable Material, Equipment and Services with Markup.** The following purchased materials, equipment and services will be reimbursed at cost and are subject to the percentage markup for overhead and profit as set forth in Article 9.4.6 of this Exhibit A:
- a. Materials and equipment incorporated in the Work;
 - b. Subcontracts, where properly identified and supported by sufficiently itemized substantiating data to permit evaluation. The Owner may request that the Construction Manager obtain subcontractor bids prior to accepting the adjustment to the contract sum; and
 - c. Rental charges of all necessary machinery and equipment rented by Construction Manager or Subcontractor, exclusive of hand tools, will be consistent with those that can be negotiated in the area. Rental rates to be charged are to be approved by Owner prior to the Date of Commencement of the Work; however, rental cost of any piece of equipment will not exceed its fair market value at the time such equipment is rented.
- .6 **Construction Manager Fee and Subcontractor Markup.** Adjustments to the Construction Manager Fee and Subcontractor Markup for Changes in the Work shall be negotiated and specifically identified in the Change Order.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PROGRAMS

- .1 **Construction Manager Responsibility.** Construction Manager will be responsible for developing, implementing, maintaining and supervising all safety programs in connection with the Work and the Project Site. Construction Manager will be responsible for taking all reasonable safety precautions to prevent injury or death to persons and/or damage to property. These obligations extend to the protection of all individuals performing Work or on the Project Site, including visitors to the Project Site, and all other persons who may be affected by the Work in any way.
- .2 **Safety Officer.** A responsible member of Construction Manager's organization will be designated in writing as Construction Manager's safety officer for each Project. This person's duties will include, but will not be limited to, compliance with Article 10.1.1 of this Exhibit A and, if this person is not the Construction Manager's Project Manager, then this person will report directly to Construction Manager's Project Manager.

10.2 SAFETY OBLIGATIONS

- .1 **Safety of Property.** Construction Manager will be responsible for taking all reasonable precautions to prevent damage to property and securing the property. Protection of property includes the Work and all materials and equipment to be incorporated into the Work, whether in storage on or off the Project Site, or under the care, custody or control of Construction Manager or any person or entity for whom Construction Manager is responsible. In addition, protection of property includes other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

Construction Manager acknowledges that the site is located in an undeveloped area and will secure the property against trespassing, vandalism and other unauthorized access to the property.

- .2 **Applicable Safety Laws.** Construction Manager will ascertain and comply with all notice and posting requirements and will comply with all applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss.

- .3 **Required Safeguards.** Construction Manager will ascertain the requirements for and will erect and maintain, as required by Law and/or existing conditions, all reasonable safeguards for safety and protection, including but not limited to, the posting of danger signs and other warnings against hazards, and the promulgation of safety regulations and notification to owners and users of adjacent property.
- .4 **Hazardous Activities.** If the Work involves any hazardous activities or the use or storage of hazardous materials or equipment, Construction Manager and Subcontractors will fully coordinate with Owner exercise the utmost care and will carry on such activities under the supervision of properly qualified and licensed personnel. The use of explosives while undertaking any Project is prohibited.
- .5 **Remedy of Damages.** Any and all damage or loss to any property, caused in whole or in part by Construction Manager, Subcontractor or any other person or entity for whose performance Construction Manager is responsible, will be promptly remedied or repaired to its original condition at the expense of Construction Manager.

10.3 SCHOOL SECURITY

- .1 **Occupied Campuses.** Construction Manager acknowledges and understands that the goods and services contemplated by this Agreement that are delivered to or performed on school grounds, which may at various times be occupied by students, teachers, parents and school administrators. Accordingly, in order to secure the schools; protect students and staff, and otherwise comply with applicable law, the Construction Manager agrees to the provisions of this Article and agrees that the failure of the Construction Manager to comply with any of these provisions may result in the termination of this Agreement by the Owner.
- .2 **Unauthorized Aliens.** The Owner considers the employment of unauthorized aliens by the Construction Manager, or any of the sub-contractors, a violation of the Immigration and Naturalization Act. The Construction Manager shall certify that no unauthorized aliens are working on the Project Site at any time. If it is determined that an unauthorized alien is working on the Project, the Construction Manager shall immediately take all steps necessary to remove such unauthorized alien from the property and the project.
- .3 **Possession of Firearms.** In accordance with §790.115 Florida Statutes, the possession of firearms will not be tolerated on School District property. No person, who has a firearm in their vehicle, may park their vehicle on the Owner's property. Furthermore, no person may possess or bring a firearm on the Owner's property. If any employee/independent contractor of the Construction Manager, or any of its sub-contractors, is found to have brought a firearm(s) on to the Owner's property, said employee/ independent contractor of the Construction Manager shall be immediately removed and terminated from the project by the Construction Manager. If sub-contractor fails to terminate said employee/ independent contractor of the Construction Manager, the Construction Manager shall terminate its agreement with the sub-contractor. If the Construction Manager fails to terminate said employee/ independent contractor of the Construction Manager or fails to terminate the agreement with sub-contractor who fails to terminate said employee/ independent contractor of the Construction Manager, the Owner may terminate this Agreement. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive devise, or any machine gun. Powder-actuated construction nailers and fasteners are excluded from this definition.
- .4 **Criminal Acts.** Employment on the project by the Construction Manager, or any of its sub-contractors, of any employee, or independent contractor of the Construction Manager, with any prior convictions of any crimes against children, crimes of violence or crimes of moral turpitude will not be tolerated. If it is determined that any person with such criminal history is on the Project Site, the Construction Manager agrees to take all steps necessary to remove such person from the project. The Owner shall have the right to terminate this Agreement if the Construction Manager does not comply with this provision.

- .5 **Possession/Use/Under the Influence of Mind Altering Substances.** Possession/use and/or being under the influence of any illegal mind altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, by the Construction Manager's employee/ independent contractor of the Construction Manager or its sub-contractor's employees/ independent contractor of the sub-contractor, will not be tolerated on the Owner's property. If any employee/independent contractor of the Construction Manager is found to have brought and/or used or is under the influence of any illegal mind altering substances as described above on the Owner's property, said employee/independent contractor of the Construction Manager shall be removed and terminated from the project by the Construction Manager. If a sub-contractor fails to terminate said employee/ independent contractor of the sub-contractor, the agreement with the sub-contractor for the project shall be terminated by the Construction Manager. If the Construction Manager fails to terminate said employee/independent contractor of the Construction Manager or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/ independent contractor of the sub-contractor, the Owner may terminate this Agreement.
6. **Secured Areas.** Unless Construction Manager is otherwise notified in writing by Owner, all Owner property and premises are secured areas. Construction Manager will abide by all security requirements communicated in writing to Construction Manager by Owner. Construction Manager's failure to comply with these security requirements in any way will be grounds for termination for default or breach.
- .7 **The Jessica Lunsford Act.** Florida Statutes require that all persons or entities entering into Agreements with the School Boards/School Districts who may have personnel who will be on school grounds when students may be present, or who will have contact with students, shall comply with the Level 2 Screening requirements of the Statute and School District Standards. Construction Manager shall, at his expense, ensure that all of Construction Manager's employees and the employees of Construction Manager's subcontractors meet the background screening requirements of Section 1012.465 Florida Statute (Jessica Lunsford Act). Any individual who fails to meet the screening requirements shall not be allowed on school grounds. Construction Manager's failure to comply with this requirement will constitute a material breach of the Agreement.

10.4 **LIABILITY INSURANCE**

- .1 **Construction Manager's Liability Insurance.** Construction Manager's Liability Insurance. Construction Manager shall be licensed to perform work in the State of Florida and as a Florida employer shall purchase and maintain, in companies properly licensed or authorized to do business in Florida and reasonably acceptable to Owner, such insurance as will protect Construction Manager, Owner and their agents, representatives, and employees from claims set forth below which may arise out of or result from Construction Manager's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
 - a. Claims under the State of Florida workers' or workmen's compensation act, including disability benefit and other similar employee benefit acts (with Workmen's Compensation and Employer's Liability Insurance in amounts necessary to meet the statutory requirements of the state(s) having jurisdiction over any portion of the Work);
 - b. Claims for damages because of bodily injury, sickness or disease, or death of his employees; Construction Manager will require his Subcontractors provide Workers' Compensation Insurance for all of its employees;
 - c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
 - d. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by Construction Manager or (2) by any other person;
 - e. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including the loss of use resulting therefrom; and

- f. Claims for damages because of bodily injury or death of any person or tangible property damage due to errors and/or omissions on the part of the Construction Manager or Sub-contractor for the design of systems, products and procedures required for the execution of the Work.
 - g. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle furnished by Construction Manager.
- .2 **Primary Designation.** To the extent necessary to provide coverage under Construction Manager's insurance for the liabilities assumed by Construction Manager under the Indemnity provisions of this Agreement, the insurance required by this Article 10.4.1 (a) (b) (c) (d) (e) (f) (g) shall be primary and non-contributing to any insurance possessed or procured by the Owner, and limits of liability shall be not less than those required by this agreement.
- .3 **Tort Liabilities.** The insurance required by Article 10.4.1(a) (b) (c) (d) (e) (f) (g) shall include written contractual liability insurance to cover the tort liabilities assumed by the Construction Manager under the provisions of Article 3 of the Agreement and this shall be so noted on Construction Manager's Certificate of Insurance.
- .4 **Limits.** During the term of the Contract, Construction Manager and each Subcontractor shall, at their own expense, purchase and maintain the following insurance in companies properly licensed or authorized to do business in Florida and reasonably satisfactory to the Owner for the following amounts, or greater, if required by law.
- a. Workers' Compensation including Occupation Disease and Employer's Liability Insurance.
 - (1) Statutory - Amount and coverage as required by Chapter 440, Florida Statutes.
 - (2) Employer's Liability Each accident/disease Per Occurrence - \$500,000.00.
 - (3) Employer's Liability General Aggregate - \$1,000,000.00.
 - (4) Applicable Federal (e.g. Longshoreman's Statutory).
 - b. Commercial General Liability Insurance (the policy may including Premises Operation; Independent Construction Manager's Protective; Product Liability and Completed Operations coverage; Broad Form Property Damage; Written Contractual Liability; Aggregate Limit Per Project Endorsement. If the commercial general liability policy does not include all of the coverage's listed in this Article a separate policy must be in place to include all of the items listed in this Article). Evidence of the coverage required in this Article must be fully described and explained on the Construction Managers certificate of insurance as required in Article 10.4.5 and 10.4.7 of this Exhibit A.
 - (1) Negligence including Bodily Injury Liability and Property Damage
\$1,000,000 Per Occurrence
\$2,000,000 General Aggregate
 - (2) Product Liability and/or Completed Operations Insurance
\$1,000,000 Negligence including Bodily Injury and Property Damage
\$2,000,000 Products – Completed Operation Aggregate
 - (3) Personal Injury with Employment Exclusion deleted
\$1,000,000 Per Occurrence
\$2,000,000 General Aggregate
 - (4) Regarding Completed Operations and Products Liability, continue Coverage in force for one year after completion of the Work.
 - (5) Regarding Property Damage, include Broad Form Property Damage, Remove "X", "C", or "U" exclusions as applicable (explosion, collapse, underground property damage).

- c. Comprehensive Automobile Liability Insurance including coverage for owned, non-owned and hired vehicles - with limits stated below, or greater if required by law.
 - (1) Negligence including Bodily Injury and Property Damage
 - \$500,000 Per Claim
 - \$1,000,000 Per Occurrence
 - (2) Combined Single Limit (each Accident)
 - \$1,000,000.00 Each Accident
 - d. Professional Liability Insurance (Errors and Omissions):

To be determined if required by Owner based upon Project Scope identified in Project Work Request. When required shall be included in Cost of Work as a Project Specific Policy.

 - (1) Maximum Limits For Services, Goods, Projects that will not exceed \$1,000,000.00 in values over a year shall be:
 - Per Claim \$250,000
 - Per Occurrence \$500,000
 - (2) For services, goods, or projects that will exceed \$1,000,000 in values over a year shall be:
 - Each claim \$1,000,000.00
 - Annual Aggregate \$2,000,000.00
 Professional liability coverage must be maintained for a two-year period following completion of the contract.
 - e. Umbrella Excess Liability
 - (1) \$2,000,000.00 over primary insurance, subject to aggregate limits where applicable
 - (2) \$2,000,000.00 retention for self-insured hazards, per occurrence.
- .5 **Timing and Cancellation.** Certificates of Insurance acceptable to Owner shall be filed with Owner within five (5) days after Owner's approval of the award. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice, by registered mail, has been given to Owner.
- .6 **Owner Approval.** Construction Manager shall not commence work under this Contract until he has obtained all the insurance required thereunder and such insurance has been approved by Owner, nor shall Construction Manager allow any Subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by Owner shall not relieve or decrease the liability of Construction Manager thereunder.
- .7 **Additional Insured.** To the extent necessary to provide coverage under Construction Manager's insurance for the liabilities assumed by Construction Manager under the Indemnity, provisions of this Agreement, Owner shall be included as additional insured in Construction Manager's Commercial General Liability Insurance, and Construction Manager's Completed Operator's Insurance, and shall be listed as an "additional insured" on the certificate. All Subcontractor insurance policies provided will also name Owner as an "additional insured."

10.5 PROPERTY INSURANCE

- .1 **Construction Manager's Property Insurance.** Construction Manager shall purchase and at all times maintain such insurance as will protect Construction Manager, Owner, other representatives, agents and employees of Owner, Subcontractors and Sub-subcontractors from loss or damage to Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto (excluding any ocean shipments) and intended to become a part of the finished work until acceptance by Owner. This insurance shall be in the form of "Builders All-Risk", All Risk Installation Floater", or equivalent. Construction Manager shall cause such policy or policies of insurance required under this Subparagraph to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against Owner. Notwithstanding any such deductible provision, Construction Manager shall remain solely liable for the full amount of any item covered by such insurance.

- .2 **Construction Manager as Trustee.** Any loss insured under the Article is to be adjusted with Construction Manager and made payable to Construction Manager as trustee for the insured, as their interests may appear. Construction Manager shall pay each Subcontractor a just share of any insurance moneys received by Construction Manager, and by appropriate agreement, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.
- .3 **Waivers.** Owner and Construction Manager waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Article, or any other property insurance applicable to the Work. Construction Manager shall require, by appropriate agreement, similar waivers in favor of Owner and Construction Manager by Subcontractors and Sub-subcontractors. With respect to the waiver of rights of recovery, the term Owner shall be deemed to include, to the extent covered by property insurance applicable thereto, his consultants, employees, and agents and representatives.
- .4 **Co-Insured Requirement.** Owner shall be co-insured with Construction Manager in Construction Manager's Property Insurance.

10.6 **EFFECT OF SUBMISSIONS OF CERTIFICATIONS**

- .1 **Compliance.** Owner shall be under no obligation to review any Certificates of Insurance provided by Construction Manager or to check or verify Construction Manager's compliance with any and all requirements regarding insurance imposed by the Contract Documents. Construction Manager is fully liable for the amounts and type of insurance required herein, and is not excused should any policy or certificate of insurance provided by Construction Manager not comply with any and all requirements regarding insurance imposed by the Contract Documents.

10.7 **FAILURE OF COMPLIANCE**

- .1 **Owner Purchase.** Should Construction Manager fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, Owner may obtain such insurance on behalf of Construction Manager and charge the premiums to Construction Manager.

10.8 **LICENSED INSURANCE COMPANIES**

- .1 **License Requirements.** All insurance companies providing the above insurance shall be properly licensed or authorized by the State of Florida. Owner shall arrange with its insurers Waivers of Subrogation in favor of Construction Manager, its affiliated companies, its subcontractors and vendors on all policies obtained or maintained for this project, including without limitation any business interruption policies.

10.9 **PAYMENT AND PERFORMANCE BONDS**

- .1 **Bonding Requirements.** In accordance with the provisions of Section 255.05, *Florida Statutes*, Construction Manager shall provide to Owner a 100% Performance Bond and a 100% Labor and Material Payment Bond, each in an amount not less than the total construction cost and inclusive of the construction fee. Bonds must be submitted with the Guaranteed Maximum Price and approved prior to commencement of the Construction Phase Work on the Project. The bond form shall be AIA A-311. To be acceptable to Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
 - a. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write Surety bonds in the State of Florida.
 - b. The Surety Company shall have a currently valid Certificate of Authority, issued by the United States Department of Treasury under Sections 9304 and 9308 of Title 31 of the United States Codes.
 - c. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.

ARTICLE 11 – UNCOVERING AND CORRECTION OF WORK

11.1 CONCEALED CONDITIONS

- .1 **Adjustment of Contract Sum or Contract Time.** If during and in the performance of the Work, Construction Manager encounters concealed conditions it believes are at variance with the conditions indicated in the Contract Documents or if Construction Manager encounters unknown physical conditions of an unusual nature which differ materially from those depicted in the Contract Document, the Contract Sum or Contract Time may be equitably adjusted by Change Order upon claim by either party made in writing under the provisions and requirements of Article 9 of this Exhibit A.

11.2 UNCOVERING OF WORK

- .1 **Required Uncovering.** If Construction Manager or any Subcontractor covers any Work which Owner requested the opportunity to inspect or covers it contrary to the Contract Documents, Construction Manager will uncover this Work for Owner's inspection and all costs of such uncovering and covering after inspection will be borne by Construction Manager.
- .2 **Owner Directed Uncovering.** Owner may request that Construction Manager uncover any portion of the Work that Owner had not specifically requested to observe prior to being covered. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and covering it after inspection will be charged to Owner and the appropriate Change Order issued, including, if appropriate, an adjustment to the Schedule. If such Work is found not to be in accordance with the Contract Documents, Construction Manager will pay the cost of uncovering and covering such Work after inspection, with no adjustment to the Schedule.

11.3 CORRECTING DEFECTIVE WORK

- .1 **Correction.** All Work rejected by Owner and/or Owner's Architect-Engineer as defective or failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion of the Work or Date of Final Completion of the Work will be promptly corrected by Construction Manager.
- .2 **Cost of Correction.** Construction Manager will be responsible for all costs of correcting such defective and nonconforming Work, including but not limited to, the compensation for any of the Subcontractor's additional services made necessary.
- .3 **Failure to Correct.** If Construction Manager fails to correct defective or nonconforming Work, Owner may correct it at the expense of Construction Manager. In addition, if Construction Manager does not proceed with the correction of defective or nonconforming Work within a reasonable period of time, Owner may remove it and store it at the expense of Construction Manager. If Construction Manager fails to pay the cost of such removal and storage within ten (10) calendar days of written notice from Owner, Owner may sell the Work by any means it chooses and, after satisfying its expenses incurred therein, will pay the balance remaining, if any, to Construction Manager. If the proceeds of such a sale do not cover all costs that Construction Manager should have borne, the difference will be charged to Construction Manager.
- .4 **Notice of Defects.** Owner will give notice of defects or deviations hereunder promptly after discovery of the condition.
- .5 **No Limitations.** Nothing contained herein will be construed to establish a period of limitation with respect to any other obligation that Construction Manager might have under the Contract Documents or under applicable Law.

11.4 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

- .1 **Acceptance by Owner.** At Owner's sole option, Owner may accept defective or nonconforming Work. Owner may do so instead of requiring the removal and correction of such Work, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, any balance owed after the reduction will be paid by Construction Manager to Owner.

ARTICLE 12 - TERMINATION OR SUSPENSION OF THE CONTRACT

12.1 TERMINATION BY THE CONSTRUCTION MANAGER

- .1 **Time Frame and Reasons.** The Construction Manager may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Construction Manager or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager, for any of the following reasons:
 - a. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
 - b. An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
 - c. Because the Owner and/or Owner's Architect-Engineer has not issued a Certificate for Payment and has not notified the Construction Manager of the reason for withholding certification as provided in Article 8.1.7 of this Exhibit A, or because the Owner has not made a required payment on a Certificate for Payment within the time stated in the Contract Documents.
- .2 **Termination.** The Construction Manager may terminate the Contract if, through no act or fault of the Construction Manager or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager, repeated suspensions, delays or interruptions of the entire Work by the Owner constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
- .3 **Time.** If one of the reasons described in Article 12.1.1 or 12.1.2 of this Exhibit A exists, the Construction Manager may, upon seven days' written notice to the Owner and Architect-Engineer, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit for the percentage/portion of work properly performed, and costs incurred by reason of such termination.
- .4 **Suspension of Work.** If all of the Work is stopped for a period of 60 consecutive days through no act or fault of the Construction Manager or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Construction Manager because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Construction Manager may, upon seven additional days' written notice to the Owner and/or Owner's Architect-Engineer, terminate the Contract and recover from the Owner as provided in Article 12.1.3 of this Exhibit A.

12.2 TERMINATION BY THE OWNER FOR CAUSE

- .1 **Time Frame and Reasons.** The Owner may terminate the Contract if the Construction Manager:
 - a. Refuses or fails to supply enough properly skilled workers or proper materials;
 - b. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Construction Manager and the Subcontractors;

- c. Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - d. Otherwise is guilty of material breach of a provision of the Contract Documents, which may include failure to comply with the Project Schedule, failure to provide adequate supervision, failure to maintain a safe Project Site and/or non-compliance with Article 10 Protection of Persons and Property of this Exhibit A.
- .2 **Owner's Rights.** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
- a. Exclude the Construction Manager from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - b. Accept assignment of subcontracts pursuant to Article 5.3 of this Exhibit A; and
 - c. Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner in finishing the Work.
 - d. Accept Construction Manager's proposed remedy to immediately correct any material breach of a provision of the Contract Documents.
- .3 **Payment.** When the Owner terminates the Contract for one of the reasons stated in Article 12.2.1 of this Exhibit A, the Construction Manager shall not be entitled to receive further payment until the Work is finished.
- .4 **Balance.** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect-Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be retained by the Owner. If such costs and damages exceed the unpaid balance, the Construction Manager shall pay the difference to the Owner. The amount to be paid to the Owner shall survive termination of the Contract. The Owner's costs of finishing the Work include, without limitation, all reasonable attorney's fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs, including, but not limited to, the loss of use of the Project incurred by the Owner because of the termination of the Construction Manager as stated herein.

12.3 **SUSPENSION BY THE OWNER FOR CONVENIENCE**

- .1 **Owner's Right to Suspend.** The Owner may, without cause, order the Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
- .2 **Cost and Time Modifications.** The Cost of the Work as defined in the Guaranteed Maximum Price (Exhibit C) and Contract Time shall be adjusted for verified increases in the cost and time caused by suspension, delay or interruption as described in Article 12.3.1 of this Exhibit A. Adjustment of the Cost of the Work shall not include an increase to the Construction Manager's Fee unless scope changes arise. No adjustment shall be made to the extent:
- a. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Construction Manager is responsible; or
 - b. That an equitable adjustment is made or denied under another provision of the Contract.

12.4 **TERMINATION BY THE OWNER FOR CONVENIENCE**

- .1 **Owner's Right to Terminate.** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
- .2 **Construction Manager's Action.** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall:
- a. Cease operations as directed by the Owner in the notice;

- b. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
 - c. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- .3 **Construction Manager Payment.** In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for Work executed, and costs actually and reasonably incurred by reason of such termination, but not for General Conditions, Cost of the Work or Construction Manager Fee (as a percentage remaining incomplete) on the Work not performed.

ARTICLE 13 - CLAIMS AND DISPUTES

13.1 CLAIMS

- .1 **Claims.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between the Owner and Construction Manager arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.
- .2 **Notice of Claim.** Claims by either the Owner or Construction Manager must be initiated by written notice to the other party. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The timely giving of written notice shall be a condition precedent to any entitlement to adjustment in the Contract Time or the Contract Sum. All Claims must be submitted as a Request for Change Order with adequate detail and supporting documentation. Construction Manager agrees that Owner shall not be liable for any claims that the Construction Manager fails to submit as a Request for Change order as provided in this Article.
- 3 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 12 of this Exhibit A, the Construction Manager shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents for that Work which is not in dispute.
- .4 **Claims for Additional Cost.** If the Construction Manager wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

13.2 CLAIMS FOR ADDITIONAL TIME

- .1 **Notice.** If the Construction Manager wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Construction Manager's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- .2 **Weather.** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions at the Project Site were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

13.3 INITIAL DECISION

- .1 **Architect's-Engineer's Claim Review.** Claims, excluding those arising under Articles 10.3 and 10.4 shall be referred to the Architect-Engineer for initial decision. The Architect-Engineer will serve as the Initial Decision Maker, unless otherwise indicated in the Project Work Request. Except for those Claims excluded by this Article 13.3.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date

final payment is due, unless 30 days have passed after the Claim has been referred to the Architect-Engineer with no decision having been rendered. Unless the Architect-Engineer and all affected parties agree, the Architect-Engineer will not decide disputes between the Construction Manager and persons or entities other than the Owner.

- .2 **Initial Review.** The Architect-Engineer will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect-Engineer is unable to resolve the Claim if the Architect-Engineer lacks sufficient information to evaluate the merits of the Claim or if the Architect-Engineer concludes that, in the Architect-Engineer sole discretion, it would be inappropriate for the Architect-Engineer to resolve the Claim.
- .3 **Information and Expertise.** In evaluating Claims, the Architect-Engineer may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect-Engineer in rendering a decision. The Architect-Engineer may request the Owner to authorize retention of such persons at the Owner's expense.
- .4 **Additional Data.** If the Architect-Engineer requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect-Engineer when the response or supporting data will be furnished or (3) advise the Architect-Engineer that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect-Engineer will either reject or approve the Claim in whole or in part.
- .5 **Architect-Engineer Action.** The Architect-Engineer will render an initial decision approving or rejecting the Claim, or indicating that the Architect-Engineer is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any recommended change in the Contract Sum or Contract Time or both.
- .6 **Mediation Request.** Either party may, within 30 days from the date of an initial decision, request in writing that the other party file for mediation within 60 days of the initial decision.
- .7 **Notification of Surety.** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- .8 **Mechanic's Lien.** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

13.4 **MEDIATION**

- .1 **Mediation Requirements.** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Article 8.4.9 of this Exhibit A or Article 3.1 of the Agreement shall be subject to mediation as a condition precedent to court proceedings.
- .2 **Endeavor to Mediate.** The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

- .3 **Shared Costs.** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 14 - FINAL DISPUTE RESOLUTION

14.1 VENUE OF FINAL DISPUTE RESOLUTION

- .1 **Choice of Law.** This Agreement shall be governed by the laws of the State of Florida.
- .2 **Venue.** Exclusive venue for any dispute arising under this Agreement shall be in Brevard County, Florida.
- .3 **Action.** In the event the Owner and Construction Manager fail to resolve a dispute through mediation as provided in Article 13 of this Exhibit A, either party may file an action in the appropriate Court of the 18th Judicial Circuit In and For Brevard County, Florida, to enforce this Agreement. **THE PARTIES, INCLUDING THE CONSTRUCTION MANAGER'S SURETY, WAIVE VENUE AND JURISDICTION OF ANY FEDERAL COURT AND EXPRESSLY WAIVE TRIAL BY JURY.**

END OF EXHIBIT A