

SCHOOL DISTRICT OF INDIAN RIVER COUNTY, FLORIDA

REQUEST FOR QUALIFICATIONS

FOR

**Construction Management Services
For Construction of the Technical Education Center**

RFQ #01-0-2018JC

August 1, 2017

SCHOOL DISTRICT OF INDIAN RIVER COUNTY, FLORIDA,
REQUEST FOR QUALIFICATIONS (RFQ)
Construction Management Services

I. INTRODUCTION

A. Objectives

The School District of Indian River County, Florida is requesting qualifications from Construction Management firms. The awarded firm will provide Construction Manager At Risk (CMAR) services related to the construction of the Technical Education Center. This Project has an estimated construction budget of \$1,700,000.00. Services will include but not be limited to:

Development of the Gifford Adult Education Technical Center consisting of new Vocational Classroom/Lab Building and Existing Classroom Renovations for the conversion of the existing Gifford Alternative School Campus to an Adult Education Facility.

Construction will include:

A new +/- 4,000sq-ft. single- story Vocational Classroom/Lab Building consisting of a Welding Lab, Building Construction Lab and Common Classroom Area.

Renovation of the existing two-story Classrooms Building consisting of:

Classroom 103 conversion to a Computer Lab.

Classroom 208 conversion to a Testing Lab.

Classroom 209/210 conversion to a regular Teaching Classroom.

Classroom 211 conversion to a Phlebotomy Lab with 2-mock Exam Rooms.

Relocation of the existing Gifford Alternative Hardcourt structure to the Gifford Middle School campus.

Site work consisting of paving and drainage for additional parking, drive aisles and storm-water infrastructure.

Services shall also include:

A. Assisting the architect of record in scope of the work, selection of material, selection of equipment, and value engineering.

B. Determining with the owner and architect the maximum cost of the project.

C. Determining with the owner and architect the schedule of the project.

D. Determining with the owner and architect the selection of sub-contractors, to include, but not be limited to:

Plumbing

Building layout & Clearing

HVAC

Earthwork

Electrical

Paving

Roofing

Site Utilities
Concrete
Automated control system
Masonry
Technology Structural Steel
Rough carpentry Finish carpentry
Fire suppression system

The awarded firm will be responsible for the following tasks:

1. Data Collection
2. Schematic Design
3. Design Development
4. Construction Documents
5. Construction Administration

*This RFQ includes a CMAR Owner/Contractor Agreement that the awarded firm will be required to sign. All terms, conditions and content are non-negotiable.

General Qualifications:

1. Certified under FSS. 498 to practice or to offer Services as A “General Contractor”

B. Submittal Submission Instructions

1. Sealed Submittals

All Submittals shall be submitted in a sealed envelope on or before 2:00 p.m., September 12, 2017. Late Submittals will not be opened or considered.

One original and seven (7) copies to:
Jeff Carver, CPPO
Director of Purchasing
Indian River County School District, Florida
6055 62nd Ave.
Vero Beach, FL 32967

The School Board reserves the right to reject any and all submittals, to waive any informalities or irregularities in any submittals received, to re-advertise, or take any other such actions that may be deemed to be in the best interest of the School Board and the School District.

2. Submittal Response

Each Submittal should address all pertinent areas and be specific. Any conditions should be clearly stated.

The failure to disclose substantive terms, conditions, and covenants may be considered cause for the offeror's submittal to be rejected by the School Board.

3. Questions, Additional Information

All requests for clarifications or additional information should be directed to Indian River County School District at the following address:

Jeff Carver, CPPO
Director of Purchasing
Indian River County School District, Florida
6055 62nd Ave.
Vero Beach, FL 32967
Jeffrey.Carver@indianriverschools.org

***Contacting Board Members or district staff other than the above named individual regarding this Request for Qualifications is not allowable and will result in disqualification of your submittal.**

4. Tentative Schedule

The School District will attempt to adhere to the following schedule:

August 1, 2017	RFQ issued
September 12, 2018	Written responses due prior to 2:00 P.M.
September 15, 2018	Submittals analyzed and evaluated by the Staff Evaluation Committee and the top three firms ranked.
September 21, 2018	The top ranked firms make their oral presentations. The staff evaluation committee makes their selection.
October 10, 2018	Award Recommendation to the School Board for approval.

The School District reserves the right to alter scheduled dates, if necessary.

II. EVALUATION OF SUBMITTALS - CRITERIA

Submittals will be reviewed by the Evaluation Committee and the School Board in accordance with the requirements of Florida State Statute 287.055. If further information is desired, a Proposer may be requested to make additional written submissions or oral presentations

before the School Board takes action. The School District will base its decision on factors including, but not necessarily limited to, the following:

1. The ability of professional personnel
2. Whether a firm is a certified minority business enterprise
3. Past performance
4. Willingness to meet time and budget requirements
5. Location
6. Recent, current, and projected workloads of the firms
7. Adverse Attestation and previous audit findings.

III. Information To Be Included In The Submittal

A. Letter of transmittal

B. Table of Contents: Include a clear identification of the material by section.

C. Tabs: All proposals must be tabbed into sections containing the following information:

Tab 1: Qualification Statement (SF-330)

Tab 2: Proof of Liability Insurance

Tab 3: Proposed Project Team

Tab 4: Related Experience of Firm

Tab 5: Project Management and Cost Control

Tab 6: Licenses, Certificates and References

Tab 7: Current Work Load

Tab 8: Litigation

Tab 9: Adverse Attestation and Audit Findings

Insurance Requirements

Worker's Compensation consistent with Florida Statutes shall be carried and in force during the period of work under this contract by the proposer.

Property and casualty insurance with general liability comprehensive broad form endorsement and automotive liability in limits of \$1,000,000 single occurrence; \$2,000,000 aggregate. To be considered, carrier shall be duly licensed by the State of Florida and recognized as an admitted carrier in the State of Florida.

Proposer shall provide the School District of Indian River County with a Certificate of Insurance naming the District as an "additional insured", with thirty (30) day notice of cancellation. Certificates of Insurance verifying the above coverage's and validity periods shall be provided to the Director of Purchasing and Warehousing before a purchase order can be issued, and as necessary to confirm the validity of coverage during the project.

Builder's Risk Insurance: The contractor shall procure and maintain for the life of the project, Builder's Risk Insurance. This shall be All Risk Coverage, with the limits of insurance equal to 100 percent of the complete value of the project. This policy shall include a "Waiver of Occupancy" clause. The deductible will be a maximum deductible amount of \$25,000 per claim. When the installation of machinery or equipment is included, it must also be covered by this policy. This pertains to transit and installation. Coverage shall be primary rather than contributory with any insurance carried by the Owner.

The School District of Indian River County must be named as an additional insured under this policy. Thirty (30) days written notice must be provided to the School District of Indian River County in the event of impending cancellation. All deductibles are the responsibility of the Contractor.

D. Forms

1. Drug Free Work Place
2. Non-Collusion Affidavit
3. Sample CMAR Contract (*Non-Negotiable*)
4. Conceptual Site Plan

CONFIRMATION OF DRUG-FREE WORKPLACE

IDENTICAL TIE BIDS: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quantity, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a Drug-Free Workplace Program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program (Florida Statutes Section 287.087 Florida Statutes).

In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibitions.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or Contractual services that are under Bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or Contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 Florida Statutes or of any controlled substance law of the United States or any State, for a violation occurring in the workplace no later than five (5) days after the conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Bidders Signature

JESSICA LUNSFORD ACT

- A. Contractor/CM, his subcontractors, vendors and suppliers who are to be permitted access to school grounds while students are present, or have direct contact with students or have access to or control of school funds shall obtain Level 2 background screening in accord with Florida Statute FS1012.465 – Jessica Lunsford Act.
 - 1. Level 2 screening excludes personnel working on school district property where students are present who have criminal records that include sexual offender, sexual misconduct with developmentally disabled or mental health patients, terrorism, murder, kidnapping, lewd, lascivious or indecent acts or exposure, incest, child abuse or neglect.
 - 2. Persons screened as noted above with other types of criminal history may be allowed on school grounds provided under following conditions:
 - a. Contractor/CM, subcontractors, vendors and suppliers shall be under continuous direct supervision of school district employee or Level 2 screened and cleared employee as noted above.
 - b. Contractor/CM, subcontractors, vendors and suppliers may be allowed on student occupied site if area of construction is isolated from students by continuous six foot high chain link fence separating work area and school.
 - c. Persons with current Level 2 clearance who are subsequently arrested for disqualifying offenses shall be disqualified from access to school sites and shall immediately surrender their Photo ID Badge to their employer who shall be responsible for returning badge to Indian River County School District's Department of Human Resources within 48 hours of arrest or notice of arrest or criminal offense.
 - d. Persons failing to notify their employer and Indian River County School District's Department of Human Resources within 48 hours of arrest will be charged with 3rd degree felony, punishable by up to five years imprisonment and \$1,000 fine.
 - e. Employers of persons having been arrested for disqualifying offenses who subsequently allows said employee to continue working on school property may also be charged with 3rd degree felony, punishable by up to five years imprisonment and \$1,000 fine.
- B. Contractor/CM, his subcontractors, vendors and suppliers working on school board sites shall be fingerprinted and obtain work badges.
 - 1. Questions regarding fingerprinting or identification badge processing may be directed to: Nicola Blanton, Fingerprint Specialist (772) 564-3024

Construction Management at Risk

Agreement Between Owner And Construction Manager

PROJECT NAME/LOCATION
SDIRC #

CONSTRUCTION MANAGER

ARCHITECT / ENGINEER



School Board of Indian River County
6500 57th Street Vero Beach, Florida 32967

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**FORM OF AGREEMENT
BETWEEN
OWNER AND CONSTRUCTION MANAGER**

This AGREEMENT made this ____ day of _____, by and between the **School Board of Indian River County**, hereinafter called the **Owner**, and _____, hereinafter called the **Construction Manager**.

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

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 with the Architect-Engineer, in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and use his best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.

- 1.1 The Construction Team The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership throughout the life of the project, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

The specific representatives of the Construction Team are shown in **Exhibit A** attached.

- 1.2 Extent of Agreement This Agreement for "_____" between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. When Drawings, Specifications and other descriptive documents defining the work to be included under a construction authorization are complete, they shall be identified in the construction authorization issued by the Project Manager. When Drawings, Specifications and other descriptive documents defining the work to be included in the Guaranteed Maximum Price (GMP) are complete, an Amendment to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the GMP amount and the Drawings, Specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the Owner, the Construction Manager shall obtain six (6) sets of signed, sealed and dated Drawings, Specifications and other documents upon which the GMP is based from the Architect-Engineer, shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP and shall send one set of the documents to the Owner's Contracts Administrator along with his GMP proposal, while keeping one set for himself and returning one set to the Architect-Engineer.

The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the scope of the Work by the Construction Manager. All Work mentioned or indicated in the Contract Documents shall be performed by the Construction Manager as part of this Agreement unless it is specifically indicated in the Contract Documents that such Work is to be done by others. In the event the Drawings or the Specifications disagree in themselves or with each other, the Construction Manager shall provide the better quality or better quantity of Work unless otherwise directed by a written addendum to the Agreement. In the event of discrepancies among the Contract Documents, the documents shall be construed according to the following priorities:

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

This Agreement shall not be superseded by any provisions of the Construction Documents and may be amended only by written instrument signed by both Owner and Construction Manager.

1.3 Definitions:

Project The Project is the total work to be performed under this Agreement. The Project consists of planning, design, permitting and construction for “_____” necessary to build the component parts identified in **Exhibit B**.

Owner The School Board of Indian River County. The entity that will occupy, use and own the Project upon substantial completion is the School Board of Indian River County. The funds with which the compensation of the architects, engineers, Construction Managers, etc. will be paid are under the control of the School Board of Indian River County, based on approval of each payment by the School Board of Indian River County.

Permitting Authority **The School Board of Indian River County, Vero Beach, Florida**

Construction Manager

Architect/Engineer

Project Manager The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner’s responsibilities. **See Exhibit A**

Owner’s Representatives The Project Manager and his superiors or designee(s).

Estimate The Construction Manager's latest estimate of probable Project Construction Cost.

- 1.4 Owner's Construction Budget Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is \$_____ (ENTIRE PROJECT), identified in Exhibit B. This acknowledgement of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7, subsequent to the approval of this Agreement by the School Board.

ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS)

2.1.1 General:

Narrative Reporting System

- (1) The Construction Manager, in collaboration with Architect-Engineer, shall prepare written reports as described hereunder. All reports shall be in 8.5" X 11" format.
- (2) The Narrative Reporting System shall include the following reports:
 - (a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Permitting Authority.
 - (b) A Monthly Cost Narrative describing the current Construction Cost estimate status of the Project.
 - (c) A Monthly Scheduling Narrative summarizing the current status of the overall Project Schedule. This report shall include an analysis of the various Project Schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
 - (d) A Monthly Accounting Narrative describing the current cost and payment status of the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations.

- (e) A Monthly Construction Progress Report during the Construction Phase summarizing the work of the various sub construction. This report shall include information from the weekly job site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
- (f) Construction Manager shall submit, for Owner approval, a direct tax savings purchase plan that, upon acceptance, will be part of the Construction Manager's services.
- (3) The reports outlined in subsection (2) (a) through (e) above shall be bound with applicable computer reports and submitted monthly during Design and Construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others designated by the Project Manager with the monthly pay requisition.

Additional copies of the report outlined in subsection (2) (a) shall be bound separately and distributed monthly as directed by the Project Manager.

2.1.2 Schedule Control System

(1) Master Project Schedule

Upon award of this Contract, the Construction Team shall submit a master Project Schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This Schedule will serve as the framework for the subsequent development of all detailed schedules. The master Project Schedule shall be produced and updated monthly throughout the Project.

(2) Construction Schedule

At the same time that the Guaranteed Maximum Price (GMP) is submitted to the Owner, the Construction Manager shall prepare and submit to the Architect-Engineer a Construction Schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity.

Following development and submittal of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original Construction Schedule and all updates and/or revisions thereto as reflected in the updated and/or revised Construction Schedule last submitted prior to submittal of each

such monthly update and revision. Each such update and/or revision to the Construction Schedule shall be submitted to the Architect-Engineer in duplicate. Failure of the Construction Manager to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule update acceptable to the Architect-Engineer is submitted.

- (3) The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:
 - (a) Pre-Bid Schedules (Sub Networks) the Construction Manager shall prepare a Construction Schedule for work encompassed in each bid package. The Schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationship between the work of the successful bidder and that of other Subcontractors, and shall establish milestones keyed to the overall master Schedule.
 - (b) Occupancy Schedule The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turnover procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

2.1.3 Project Accounting The Construction Manager shall in coordination with the Architect-Engineer submit reports as detailed below:

- (1) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- (2) A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

2.2 Design Review and Recommendations- Preconstruction Services

- (1) Review and Recommendations
The Construction Manager shall familiarize himself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from preliminaries

through working drawings. He shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer, and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the Project. He shall furnish pertinent information as to the availability of materials and labor that will be required. He shall submit to the Owner, Permitting Authority and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. He shall call to the Project Manager's and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents. He shall prepare an estimate of the Construction Cost utilizing the unit quantity survey method.

(2) Report Review and Warranty

Within forty (45) days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in paragraph (1) above and on factors set out in paragraph (5). Promptly after completion of the review, he shall submit to the Project Manager and Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.2.

AT COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE PLANS AND SPECIFICATIONS, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, THE CONSTRUCTION MANAGER SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED TIME.

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

(3) Long Lead Procurements

The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the Subcontractors, the Project Manager and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare invitations for bids. The Construction Manager shall keep

himself informed of the progress of the respective Subcontractors or suppliers, manufacturing or fabricating such items and advise Project Manager, Owner and Architect-Engineer of any problems or prospective delay in delivery.

(4) Job-Site Facilities

The Construction Manager shall arrange for all Job-Site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection and supervision of construction. The Construction Manager is responsible for proper care and maintenance of all equipment while in his control.

(5) Weather Protection

The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature and as to the Contract or contracts in which they should be included.

(6) Labor and Material Recommendations

(a) The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; he shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurements, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.

(b) Within thirty (30) days after receiving Notice to Proceed, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Project Manager and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.

(c) The Construction Manager shall carry out an active program of stimulating interest of qualified Construction Managers in bidding on the work and of familiarizing those bidders with the requirements of this Project.

2.3 Construction Phase

(1) Construction Manager's Staff

The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractor and shall provide no less than those personnel during respective phases of construction that are set forth in Exhibit C to this Agreement. He shall not change any of those persons named in Exhibit C unless mutually agreed by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

(2) Lines of Authority

The Construction Manager shall establish and maintain lines of authority for these personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the Subcontractor, the Architect-Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and Subcontractor. The Owner and Architect-Engineer may attend meetings between the Construction Manager and his Subcontractor; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the Subcontractor.

(3) Schedule

Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his Subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Project Schedule. The Schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. He shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control.

(4) Solicitation of Bids

(a) Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall requests for bids and proposals when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and for site utilities. Such requests for bids and proposals shall be prepared in accordance with the following guidelines:

1. Contracts not exceeding \$10,000 may be entered into by the Construction Manager with the firm who submits the lowest verbal quotation. The Construction Manager shall obtain a minimum of two (2) verbal quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner, Architect-Engineer and to each firm. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of work to be provided.
 2. Contracts exceeding \$10,000 but not exceeding \$200,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction Manager shall request firms to submit sealed written proposals based on a written drawing and/or specification. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm.
 3. Contracts exceeding \$200,000 but not exceeding \$500,000 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive proposal. The Construction Manager shall advertise these projects at least once with the last advertisement appearing at least twenty-one (21) calendar days prior to the established bid opening date. These proposals shall be based on approved plans and specifications.
 4. Contracts exceeding \$500,000 shall be treated the same as described under #3 above except that the advertisement shall be run for at least thirty (30) days prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.
- (b) For each separate construction contract exceeding \$25,000, the Construction Manager shall unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Manager. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.

(5) Bonds

In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond each in an amount not less than the total Cost of the Project as defined in Article 9 plus the Construction Manager's fees defined in Article 8.

To be acceptable to the School Board of Indian River County 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 to 9308 of Title 31 of the United States Code.
- (c) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (d) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
- (e) If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
 1. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

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

2. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:
 - (i) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the state of Florida, Department of

Insurance to do business in this state have been met.

- (ii) In the case of the Surety Insurance Company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

(6) Quality Control

The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the Construction. He shall supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and Specifications and he shall continue to exert his influence and control over each Subcontractors to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect-Engineer over acceptability of work and conformance with the requirements of the Specifications and plans, the Owner shall be the final judge of performance and acceptability.

(7) Subcontractor Interfacing

The Construction Manager shall be the single point of interface with all Subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractor and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. He shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. He shall request the Architect-Engineer to make interpretations of the Drawings or Specifications requested of him by the Subcontractor and shall maintain a suspense control system to promote timely response. He shall advise the Project Manager and Architect-Engineer when timely response is not occurring on any of the above.

(8) Permits

The Owner shall secure all necessary building permits from the permitting authority and all necessary utility connection permits, the cost of which will be considered a direct cost item.

(9) Job Site Requirements

- (a) The Construction Manager shall provide for each of the following activities as a part of his Construction Phase Fee:
1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 6. Provide a quality control program as developed under Article 2.4(6) hereinabove.
 7. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
 8. Travel to and from his home office to the Project site as the Project requires.
- (b) The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide the printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors as a direct cost item.

(10) Job Site Administration

As part of the General Conditions as defined in 8.1.3, the Construction Manager shall provide job site administrative functions during construction. Job site administration includes holding, in conjunction with the Architect-Engineer, job meetings with the frequency of meetings to be determined by the Owner, but in no case less than on a monthly basis. Administration also includes plan review & approval, construction material management, reporting functions and payment & accounting activities.

(a) Job Meetings

The intent of the job site meeting is to preplan work and reinforce schedules and for establishing procedures, responsibilities, and identification of authority. The intent is also to assure proper documentation, including but not limited to such things as the following:

Topics of discussion shall include, but not be limited to the following:

- (1) Review and coordination of each Subcontractor's work.
 - (2) Review and implementation of revisions to the Schedule.
 - (3) Discussion and resolution of issues and barriers to completing the job.
 - (4) Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution.
 - (5) Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.
- (b) Shop Drawing Submittals/Approvals
Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process. Maintain a submittal log with the status of all due submittals including their projected submittal date, projected approval date, actual submittal date, review status, actual approval date, and any other information pertinent to plan the project.
- (c) Material and Equipment Expediting
Provide staff to closely monitor material and equipment deliveries, critically important checking and follow up procedures on supplier commitments of all Subcontractors.
- (d) Payments to Subcontractors
Develop and implement a procedure for review, processing and payment of applications by Subcontractors for progress and final payments.
- (e) Document Interpretation
Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
- (f) Reports and Project Site Documents
Record the progress of the Project. Submit written progress reports to the Owner and the Architect-Engineer, including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- (g) Subcontractor's Progress
Prepare periodic punch lists for Subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

- (h) **Substantial Completion**
Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. The Architect-Engineer will prepare a list of unsatisfactory items during the completion inspection that will be known as the punchlist. Upon receipt of the Architect-Engineer's punchlist, the Construction Manager shall have 30 days to remedy all items, at which time Final Completion will be issued. See the Section 18.9 for Liquidated Damages concerning the failure to attain Substantial Completion or Final Completion by the prescribed date. If the Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect-Engineer will prepare the pre-substantial punch list from which the Construction Manager will develop a completion schedule that must be reviewed and approved by the Owner. The Architect-Engineer will issue a Certificate of Substantial Completion when the work on his pre-substantial punch list has been accomplished. **See Exhibit D**
- (i) **Final Completion** Monitor the Subcontractor's performance on the completion of the Project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion Form shown in **See Exhibit E**
- (j) **Start Up** With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start up and testing by the trade Construction Managers.
- (k) **Record Drawings**
During the progress of the work, the Construction Manager shall require the plumbing, air conditioning, heating, ventilating, elevator and electric Subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. The Construction Manager shall also record all drawing revisions that have been authorized by Change Order that effect wall or partition locations, door and window locations and other template changes. The exact routing of conduit runs shall be shown on these drawings.

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

The Construction Manager shall review the completed "As Built" drawings and ascertain that all data furnished on the drawings is accurate and truly represents the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this Project. The disks shall be submitted to the Architect-Engineer when completed, together with two (2) sets of blue-line or black-line prints for certification and forwarding to the Using Agency, at the time of final completion.

(11) Project Records

The Construction Manager will maintain at the job site, unless agreed to otherwise by the Project Manager, on a current basis, files and records such as, but not limited to the following:

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

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

(12) Owner Occupancy

The Construction Manager shall provide services during the Design and Construction Phases, which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Construction Manager “on line” in such conditions as will satisfy Owner operational requirements.

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

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

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

The Owner will not occupy or take control of the Project until the above items discussed in this paragraph have been completed and the Substantial Completion, Start Up, Record Drawing and Warranty requirements specified in paragraphs 2.3(10)(h thru j) and 2.3(13) have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection nine (9) months after Owner Occupancy.

(13) Warranty

Where any work is performed by the Construction Manager's own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the date of Owner Occupancy per 6.2 or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract documents. Also, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy.

(14) No city or county permits or inspection fees are required on school property. The Owner will pay costs of any impact, pollution control, any and all state and federal environmental permits including but not limited to clean water act permits, or connection fee charged to cover costs of central plants and main trunk line. When the Contract Documents require connection from the Work into

utility lines or streets, the Construction Manager shall pay all costs of such connections, regardless of whether Work is done by the Construction Manager or by the utility supplier. Permits for such Work may need to be coordinated by the Designer for permit application.

- (15) In-progress inspections by city or county officials or their inspectors are not required on school property. State certified inspectors or representatives employed by the Owner will check for compliance with applicable codes and monitor the course of construction on the Owner's behalf. This inspector may call to the Construction Manager's attention, Work which is considered to be not in accordance with the Drawings and Specifications, and therefore unacceptable. The Construction Manager will either repair or replace such construction, or appeal to the Designer for a ruling. The Designer will be the final authority as to acceptability of Work, and the inspector will not by inference, be accepting Work on the Designer's behalf. The inspector may from time to time request changes in the Work which will enhance the job or remove an undesirable condition. In such instances, the Owner's request will be in writing to the Construction Manager through the Designer.
- (16) Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebated, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner and the Construction Manager shall make provisions so they can be secured.
- (17) The Construction Manager shall obtain and deliver promptly to the Designer any occupancy permit and any certificates of final inspection of any part of the Construction Manager's Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, and air compressors, which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Designer shall be a condition precedent to substantial completion of the Work unless the certificates stated herein are withheld for reasons that are neither the fault nor the negligence of the Construction Manager.
- (18) Accounting Records and Audit
 - (a) The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants or other duly authorized representatives or agents shall be afforded access to the Construction Manager's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project for audit purposes, and the Construction Manager shall preserve these records, documents and data for a period of four years after final payment, or for such longer period as may be required by law. The Construction Manager shall require all of its Subcontractors likewise to retain such records, documents and data. If the Construction Manager receives notification of a dispute or the commencement of litigation regarding the Project within this four-year period, the Construction

Manager shall continue to maintain all Project records until final resolution of the dispute or litigation.

- (b) Upon seven calendar days' written notice, from the date of this Agreement to the last date described in Article 2.3(18)(a), the Construction Manager shall make its records available during normal business hours to the Owner or its authorized representative(s). Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Construction Manager's records at the Owner's reasonable expense, within adequate work space at the Construction Manager's facilities. Such rights to inspect, examine, review and copy shall extend to the records and documentation of Subcontractors. Failure by the Construction Manager to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner to the Construction Manager pursuant to this Agreement.
 - (c) If at any time, Owner conducts an audit of Construction Manager's records and documentation and finds that Construction Manager overcharged Owner, Construction Manager shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$10,000.00, Construction Manager shall pay to the Owner the Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Manager. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Manager with regard to the Project or under any other agreement between Construction Manager and Owner. If such amounts owed Construction Manager are insufficient to cover the Overcharged Amount and the Audit Amount, as applicable, then Construction Manager hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount and the Audit Amount be deemed a reimbursable Cost of the Work.
 - (d) This Article 2.3.18, "Accounting Records and Audit," including all access, inspection, and copying, auditing, reimbursement and repayment rights shall survive the termination of this Contract.
- (19) The Construction Manager is solely responsible for reviewing and comparing the Contract Documents with each other and shall immediately report to the Designer any and all errors, inconsistencies or omissions. In the event the Construction Manager performs any Work with the knowledge that it involves an error, inconsistency or omission in the Contract Documents, the Construction Manager shall be responsible for such erroneous, inconsistent, or omitted Work. The Construction Manager is also responsible for taking such field measurements as are necessary in order to verify field conditions and to compare such field

measurements and conditions with the Contract Documents. Any and all errors, inconsistencies or omissions shall be immediately reported to the Designer.

- (20) The Construction Manager shall be solely responsible for supervising and directing the Work, and shall have sole responsibility for determining appropriate construction means, methods, techniques, sequences and procedures, and for coordinating the Work under the Contract Documents. The Construction Manager shall be solely responsible to the Owner for the acts and omissions of all entities or persons performing or supplying any portion of the Work for which the Construction Manager has contracted.
- (21) The Construction Manager is not relieved of its obligations to perform the Work in accordance with the Contract Documents by any activity of the Designer, unless such change to the Work has been reduced to writing and executed by the Owner.
- (22) The Construction Manager hereby warrants to the Owner that all materials and equipment furnished under the Agreement will be of good quality and new, and that the Work performed will be free from any and all defects and will be in conformity with the requirements of the Contract Documents. All Work not conforming to these requirements may be declared defective by the Owner. If requested, the Construction Manager shall furnish evidence to the satisfaction of the Owner of the quality of the materials and equipment supplied. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. Prior to Final Payment the Construction Manager shall procure and deliver to the Designer and Owner all special warranties required by the Contract Documents. Construction Manager will provide a warranty for all work and materials for 1 year from Final Completion.
- (23) In requesting approval of deviations or substitutions, the Construction Manager shall provide evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Designer or Owner, the evidence presented by the Construction Manager does not provide a sufficient basis for such reasonable certainty, the Designer may reject such substitution or deviation without further investigation. The Designer shall not unreasonably reject the request of the Construction Manager.
- (24) The contract documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The Designer shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the project, as well as for their intrinsic merits. The Designer will not approve as equal to materials specified proposed substitutes which, in the Designer's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Construction Manager shall, if required by the Designer, furnish the substituted material in any color, finish, texture, or pattern which would have

been available from the manufacturer originally specified, at no additional cost to the Owner.

- (25) The Construction Manager shall pay all applicable sales, consumer, use and similar taxes for the Work which are legally required.
- (26) The Construction Manager shall employ a competent superintendent who shall be the Construction Manager's representative, reasonably acceptable to the Owner, and necessary assistants who shall be in attendance at the Project Site full time during the progress of the Work until the date of substantial completion, and for such additional time thereafter as the Owner and Construction Manager both agree to be necessary for the expeditious completion of the Work. The Construction Manager shall remove the superintendent if requested to do so in writing by the Owner, and shall promptly replace her/him with a competent person reasonably acceptable to the Owner.
- (27) The Construction Manager shall establish the building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their Work.
- (28) The Construction Manager shall arrange for and attend job meetings with the Designer, Owner and such other persons as the Designer and Owner may from time to time wish to have present. The Construction Manager shall be responsible for recording and distributing meeting minutes. The Construction Manager shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Construction Manager's own superintendent. An authorized representative of any Subcontractors or sub-Subcontractors shall attend such meetings if the representative's presence is required by the Designer or Owner. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change order, time schedules, manpower and construction change directive, unless the above listed items require approval by the Owner. Any notices required under the Agreement may be served on such representatives.
- (29) The superintendent as designated by the Construction Manager and accepted by the Owner and Designer shall not be reassigned from the job prior to final completion, except with the approval of the Owner.
- (30) The Construction Manager shall be required to prepare a schedule of submittals for the Designer's approval which is coordinated with the construction schedule, allowing sufficient time for Designer review. The submittals shall reference progress schedule dates for installation and Specification section. The Owner shall be provided with one copy of the accepted schedule of submittals for the Owner's records.
- (31) The Construction Manager shall review, approve and submit to the Designer any and all shop drawings, product data, samples and any other similar submittals which are required by the Contract Documents, and allow a reasonable amount of time for review by the Designer, without impacting the Work schedule. The Construction Manager shall not perform any part of the Work relating to the shop

drawings, product data, samples or any other similar submittals, until such items have been approved by the Designer.

- (32) The Designer's approval of any shop drawing, product data, sample or other similar submittal does not in any way relieve the Construction Manager of responsibility for deviations from the requirements of the Contract Documents. Further, the Construction Manager shall not be relieved of responsibility for any errors or omissions in the shop drawings, product data, samples or any other similar submittals simply by the Designer's approval. In the event a deviation is requested, the Construction Manager shall specifically identify the deviation in writing to the Designer at the time of the submittal and the Designer is required to respond in writing to approve the specified deviation.
- (33) By approving and submitting shop drawings, product data, samples, and similar submittals, the Construction Manager represents that the Construction Manager has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted shop drawings, product data, samples, or similar submittals and verification of compliance with all the requirements of the contract documents. The accuracy of all such information is the responsibility of the Construction Manager.
- (34) When professional certification of performance criteria of materials, systems or equipment is required by the contract documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Designer shall be expected to make any independent examination with respect thereto.
- (35) The right of possession of the premises and the improvements made thereon by the Construction Manager shall be retained at all times by the Owner. The Construction Manager's right to enter arises solely from the permission granted by the Owner under the Contract Documents. The Construction Manager shall confine the Construction Manager's equipment, the storage of materials and the operations of the Construction Manager's workmen to the Project site and according to the directions of the Designer, and shall not unreasonably encumber the premises with the Construction Manager's materials.
- (36) The Construction Manager shall keep the premises, the surrounding area and property free from all waste, construction debris, or trash. At the completion of the Work, the Construction Manager shall remove all tools, construction equipment, machinery and surplus materials. In the event the Construction Manager fails to keep the premises, surrounding area and property in a clean condition, the Owner may do so and charge the cost back to the Construction Manager.
- (37) Immediately prior to the Designer's inspection for substantial completion, the Construction Manager shall completely clean the premises utilizing a licensed cleaning service. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic

surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Construction Manager at the Construction Manager's expense.

ARTICLE 3 OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information The Owner shall provide full information regarding his requirements for the Project.
- 3.2 Owner's Representative The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets and changes in Project. He shall render decisions promptly and furnish information expeditiously. The Owner's Project Representative who shall act as OWNER'S PROJECT MANAGER is _____ who is a School District employee. The Owner's Project Manager has the authority to approve matters contemplated in this Agreement where the monetary impact is within the Owner approved Contingency.
- 3.3 Architect and Engineer's Agreement The Owner shall retain an Architect-Engineer for design and to prepare Construction documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.
- 3.4 Site Survey and Reports The Owner shall provide to the Construction Manager any and all existing surveys describing physical characteristics, legal limitations and utility locations for the Project, and a written legal description of the Site. The surveys and legal descriptions may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.
- 3.5 Approvals and Easements The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.6 Legal Services The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such auditing services as he may require.
- 3.7 Drawings and Specifications The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.

- 3.8 Cost of Surveys and Reports The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 3.9 Project Fault Defects If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, he shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.
- 3.10 Funding The Owner shall furnish in accordance with the established Schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.
- 3.11 Lines of Communication The Owner and Architect-Engineer shall communicate with the Subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.
- 3.12 Lines of Authority The Owner shall establish and maintain lines of authority for his personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 3.13 Permitting and Code Inspections Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.
- 3.14 Testing Owner shall provide independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
- 3.15 The Owner shall retain a competent registered professional engineer or registered land surveyor who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated Work such as, but not limited to, roads, utilities and site grading. The engineer or land surveyor shall certify the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries. The engineer or land surveyor shall provide to the Owner certified as-builts at the completion of the project.
- 3.16 The Owner has the right to perform construction work related to the Project with the Owner's own employees, or by contracting with other individuals or entities. The Owner shall be responsible for coordination of activities of Owner's own employees or of any separate Construction Managers, with the Work performed by the Construction Manager. The Construction Manager shall cooperate or participate with any separate Construction Manager and the Owner in reviewing and coordinating construction schedules.
- 3.17 The Construction Manager shall not interfere with either the Owner or any separate Construction Manager's ability to store materials and equipment, or perform construction work. In the event the Construction Manager's Work depends upon, or connects to, the construction by the Owner or any separate Construction Manager, the Construction Manager is required, prior to proceeding with that portion of the Work, to immediately report to the Designer any and all discrepancies or defects which would render it unsuitable for continuation of the Work. In the event the Construction Manager fails to

report, such failure shall be deemed an acceptance of the Work performed by the Owner or separate Construction Manager by the Construction Manager and that the Work is fit and proper.

ARTICLE 4 PERMITTING AND INSPECTION

Construction will be inspected for code compliance, compliance with Drawings and Specifications, and quality by inspectors working for the Permitting Authority. The building permitting and code inspection requirements shall be as described in Articles 4.1 through 4.2 hereinafter.

4.1 Building Permits

The Construction Manager shall ensure that the following information has been provided to the Permitting Authority and obtain approval from the Permitting Authority prior to beginning construction:

- (1) Three (3) sets of documents, signed, sealed and dated by the Architect-Engineer, with all addenda enclosed with each set. These documents may be sent to the Permitting Authority prior to sending the building permit application.

4.2 Code Inspections

All projects require detailed code compliance inspections during construction in disciplines determined by the Permitting and general building.

Inspection personnel will be provided by the Permitting Authority. Names, addresses, and phone numbers of the inspectors will be provided to the Construction Manager by the Permitting Authority.

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

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

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

ARTICLE 5 SUBCONTRACTS

- 5.1 Definition A Subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at the site. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect-Engineer and any Subcontractor.
- 5.2 Proposals Subject to Article 9 and, in accordance with Article 2.3(4), the Construction Manager shall request and receive proposals from Subcontractors and suppliers and will award those contracts to the most qualified respondent, after review of each proposal and satisfaction that the Subcontractor is qualified to perform the work.
- 5.3 Required Subcontractor's Qualifications and Subcontract Conditions
- 5.3.1 Sub contractual Relations Subcontractor to the Construction Manager shall be held to the same terms and conditions as described herein.
- 5.3.2 Subcontract Requirements
- (1) The Construction Manager may opt to require performance or payment bonds from any Subcontractor. The cost of such bonds shall only be included in the Cost of the Work on those Subcontractors whose value is in excess of \$100,000. Any other Subcontractor bond costs shall not be considered a Cost of the Work, and therefore shall not be reimbursable by the Owner to the Construction Manager. If the Construction Manager wishes to award subcontracts to Subcontractors unable to supply this bonding, it may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.
 - (2) The Subcontractor financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
 - (3) Work force The Subcontractor must agree to perform no less than 15% of the Project Construction Work utilizing its own employees.
 - (4) Subcontractor Experience The Subcontractor must have successfully completed no less than two (2) projects of similar size and complexity within the last five (5) years.
 - (5) Supervision The Subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the Subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the Subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent position.

(6) All subcontracts shall provide:

(a) **LIMITATION OF REMEDY – NO DAMAGES FOR DELAY**

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

In the event of a change in the work, the Subcontractor's claim for adjustments in the Contract Sum are limited exclusively to its actual costs for such changes plus no more than 15% for Overhead and Profit and bond costs.

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

(b) Each subcontract shall require that any claims by Subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees and agents and his Subcontractor, their agents and employees, and all other persons performing any of the work or supplying materials under a Contract to the Construction Manager.

5.5 Subcontracts to be provided the Construction Manager shall include a copy of each subcontract including the general supplementary conditions, in the Project Manual

**ARTICLE 6
SCHEDULE, TIME OF COMMENCEMENT
AND SUBSTANTIAL COMPLETION**

6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project Schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the Construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. Any request for extensions of the Final Completion Date must be approved by the School Board of Indian River County. Determination of final completion and acceptance shall be approved by the School Board of Indian River County. The Construction Manager

acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.3(12) hereinabove. Warranty called for by this Agreement or by the Drawings and Specifications shall commence on the date of Owner Occupancy of the Project

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 When the Construction Documents are sufficiently complete to establish the scope of work for the Project or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer and Construction Manager upon execution of this Agreement, which is to be used only as a guide in developing the Specifications and plan data necessary to establish a Guaranteed Maximum Price, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the Construction Cost of the Project or designated part thereof. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9, plus the Construction Manager's fees or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes in the Cost of the Project which are legally enacted at the time the GMP is established.
- 7.3 When the Project is bid and 100% of the Trade Contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed at the request of the Owner. In other words, if 10% of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by Change Order.
- 7.4 At the time of submission of a Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. In addition to the cost of work, a GMP will include an agreed upon sum as the Construction Contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received 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 the GMP.

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

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services, fees as set forth in Subparagraphs 8.1.1, 8.1.2 and 8.1.3. Contingent upon funds being approved by the Board on a yearly fiscal basis.

8.1.1 Design Phase Fee – During the Design Phase, the Construction Manager will perform Preconstruction duties as outlined in 2.2. The Construction Manager's compensation for work or services performed during the Design Phase will be a fee not to exceed \$_____. Any portion of the Design Phase Fee that remains unused at the commencement of the Construction Phase will be retained by the Owner.

8.1.2 Construction Phase Fee Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Construction Manager shall be compensated the cost of the salaries of all personnel assigned to the project. The Construction Manager shall provide to the Owner for review and approval, a list of all onsite personnel that will be assigned the project and the percentage of their time that will be allocated to the project. The Construction Manager's Phase Fee during the Construction Phase shall be a fee of \$_____. (However, the Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Manager question the need for the employee or employees.) The Construction Phase Fee shall be paid in Monthly payments of \$_____ each, for _____Months. The first monthly payment shall become due thirty (30) days following the issuance of the first Construction Authorization by the Project Manager and the final monthly payment shall be paid only when construction of the Project is finally completed and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

(1) Adjustments in Fee For changes in the Project as provided in Article 10, the Construction Phase Fee shall be adjusted as follows:

(a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.

- (b) Should the duration of the construction stipulated herein for Final Completion extend **Months** after the Notice-To-Proceed, receipt of final drawings and specifications, or receipt of all necessary permits, whichever is later, due to no fault of the Construction Manager, the Construction Manager's Additional Construction Phase Fee will be **\$500.00** per working day, for each day or portion thereof. The Construction Manager's staff during such time extensions will be reduced to that shown in **Exhibit H**.
- (c) The Construction Manager will not be due any additional Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed **\$100,000**. Should the GMP be increased by more than **\$100,000** under the terms of Article 10 hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Overhead and Profit for the Construction Phase will be five percent (5%) of that portion of the accumulative increases in the GMP that exceeds the GMP by more than **\$100,000**.
- (2) **Construction Manager's Exclusive Remedy:** In the event the Construction Substantial or Final Completion Date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's Sole and Exclusive Remedy is an extension of the Construction Completion Date and payment of additional Construction Phase Fees and Overhead and Profit for Construction Phase as provided above.

8.1.3 **General Conditions** General Conditions shall be included in the Construction Manager's Fee. The Construction Manager shall provide a list of General Conditions to the Owner for approval. Upon approval the following General Conditions will be included in the Construction Manager's fee for services during the Construction Phase:

- (a) General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
- (b) Those services set forth in Article 2.3(9)(a).
- (c) Job office supplies to include paper, pencils, paper clips, file folders, staples, etc. and janitorial supplies (photo copy or blue print paper not included).
- (d) Cost of utilities such as water, sewer, temporary toilets and holding tanks, telephone, and internet connection.
- (e) Health and safety items such as drinking water, required first aid kits, required fire extinguishers, and pest control.
- (f) Required cleanup during the project and final cleanup at the completion of the project.

8.1.4 Overhead and Profit for Construction Phase Overhead and Profit for any work performed shall be ____% of the Direct Cost Items plus General Conditions, as defined in this Agreement, and shall be paid proportionately to the ratio of the cost of the work in place, excluding stored materials and less retainage (see Article 12.1), as it bears on the latest estimate of the Cost of the Project or to the GMP or to the Owner's Construction Budget, whichever is less. The balance of the fee shall be paid when construction of the Project is finally completed and occupancy of the Project accepted by the Owner. The balance of the fee shall be adjusted at the completion of the Project to ____% of the Direct Cost Items plus General Conditions and Owner Direct Purchase items. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The Construction Manager's exclusive remedy for any adjustments in the Overhead and Profit for Construction Phase Fee is provided in Article 8.1.2(1).

8.1.5 Except as provided elsewhere, compensation shall not be paid to the Construction Manager for:

- (a) Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office.
- (b) Expenses of the Construction Manager's principal office and offices other than the site office.
- (c) Off-site overhead and general expenses.
- (d) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work,
- (e) Any costs not specifically and expressly described in this Article.

ARTICLE 9 COST OF THE PROJECT

9.1 Definition

The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are not included in the Construction Phase Fee. Such costs shall include the items set forth below in this Article.

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

9.2 Direct Cost Items

- (1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of his work under Agreement, times a multiplier of 1.40 to cover fringe benefits.

- (2) Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof. Payment for stored materials will be made only at the approval of the Owner.
- (3) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.
- (4) Costs including transportation and maintenance of all materials, supplies, equipment, temporary facilities, including office facilities for Construction Manager and Owner's representative and hand tools not owned by the workmen, which are employed or consumed in the performance of the work, cost on such items used but not consumed which may be turned over to the Owner at the end of the Project and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager. For those items to be turned over to the Owner at the end of the Project, Article 2.3(6) shall apply.
- (5) Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a Subcontractors or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- (6) Sales, taxes, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
- (7) The cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or his Subcontractors or suppliers.
- (8) No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.
- (9) Cost incurred due to an emergency affecting the safety of persons and property.
- (10) All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Manager's fees as set forth in Article 8.
- (11) If requested by the Owner, the Construction Manager will perform all or a portion of the General Conditions Work for the cost of the work.
- (12) If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate of GMP

breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

- (13) Transportation outside of Indian River County for those personnel employed directly for the Project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and may be in accordance with the Construction Manager's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- (17) Costs for efficient logistical control of the site, including horizontal and vertical transportation materials and personnel. Also, costs for adequate storage and parking space.
- (18) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computer hardware utilized by personnel assigned to the Project. . Software costs are not to be considered costs of the work, unless the software is specifically required for the Project and approved, in advance, by the Owner. IT support costs are considered to be overhead and not reimbursable as direct costs of the project.
- (19) Costs for any job site items not referenced herein, not normally provided by the Subcontractors, which will be provided by the Construction Manager as required to complete the work.

ARTICLE 10 CHANGE IN THE PROJECT

- 10.1 Change Orders The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP and the Construction Completion Date, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.
- 10.1.1 A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, the Construction Manager's fee, or the Construction Completion Date. Each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to the Cost of the Project.
- 10.1.2 The increase or decrease in the Guaranteed Maximum Price (GMP) resulting from a change in the Project shall be determined in one or more of the following ways:
 - (1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner. For the purposes of this subparagraph, proper itemization and support includes complete itemized statements showing quantities and unit prices for material, labor (including all applicable fringe benefits), equipment, markup for overhead and profit, and other items of cost. Costs of labor (including all

applicable fringe benefits) and materials shall be actual costs to the subcontractor;

- (2) by unit prices stated in the Agreement or subsequently agreed upon;
- (3) by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
- (4) by the method provided in Subparagraph 10.1.3.

10.1.3 If none of the methods set forth in Clause 10.1.2 is agree upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work, and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the GMP to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

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

10.1.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications or Owner furnished information, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement, be encountered, the GMP and the Construction Completion Date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.

10.2 Claims for Additional Cost or Time All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 16.

If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the Completion Date, the Substantial Completion shall be extended by Change Order for such reasonable time as

the Construction Team may determine. Any such claims for additional cost or time must be approved by the School Board of Indian River County.

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

- 10.3 Minor Changes in the Project The Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the GMP or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team, including the Project Manual and displayed monthly in the PMIS. Changes shall be approved by the Project Manager, Architect-Engineer.
- 10.4 Emergency In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

ARTICLE 11 DISCOUNTS AND PENALTIES

- 11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the Cost of the Project is paid with funds to the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to the fault of the Construction Manager for late payment of Cost of the Project will be paid by the Construction Manager.

ARTICLE 12 PAYMENTS TO THE CONSTRUCTION MANAGER

- 12.1 Monthly Statements The Construction Manager shall submit to the Owner a statement, sworn to if required, along with the cost reports required under Article 2.1.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Partial Pay Request form shown in **Exhibit K**. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete. Except when approved by the Owner, certain suppliers and Subcontractor may be paid the entire amount due when such payment is generally the practice of the industry. At 50% completion, the Owner shall approve a reduction of the retainage from 10% to 5% at his discretion. Retainage shall not be withheld on services or fees set forth in Article 8. Payments by the Owner to the Construction Manager shall be made as described in Article 19.6, hereinafter.

- 12.2 FINAL PAYMENT. Final payment of the GMP will be made after the Architect certifies that the Work is complete, Owner's representatives complete their final acceptance report, the School District's Building Official completes the final inspection and a "certificate of occupancy" is issued. . Final Payment to the Construction Manager requires School Board approval in accordance with Florida Statute 1013.50. It is understood and agreed, that final payment will not be withheld if a certificate of final inspection is issued by the Owner's Uniform Building Code Inspector, or if any other government agency refuses to give final acceptance for any reason other than the failure of the Construction Manager to complete the Work in accordance with the Contract Documents. Further, neither final payment nor any remaining Retainage shall be paid to the Construction Manager until the Architect has received an affidavit in a form sufficient to the Owner that all indebtedness in connection with the performance of the Work for which the Owner or the Owner's property may be held liable or encumbered, have been fully paid or otherwise satisfied; a certification in a form acceptable to the Owner which establishes that all required insurance will remain in full force and effect after final payment and will not be cancelled or allowed to expire until at least 30 days prior written notice has been provided to the Owner; consent of the surety to final payment; and any other certifications reasonably required by the Owner establishing full payment or satisfaction of any obligations. In the event the Construction Manager fails to furnish such certifications as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Construction Manager as a condition of final payment and at the Construction Manager's expense, to furnish a bond in a form and amount satisfactory to the Owner to indemnify the Owner against such liens or claims. The one year warranty period for the work will begin at Owner Occupancy. Warranty will be for all workmanship, material, and equipment except for Owner insured damages.
- 12.3 Payments to Subcontractors The Construction Manager shall promptly, within ten (10) days after receipt of payment from the Owner, pay all the amount due Subcontractors less a retainage of ten percent (10%) until the Project is fifty percent (50%) complete, and based on Construction Manager's evaluation of the Subcontractor's acceptable performance, the Owner may approve a reduction in retainage from 10% to 5% thereafter. If there should remain items to be completed, the Construction Manager and Architect-Engineer shall list those items required for completion, and the Construction Manager shall require the retainage of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimate cost of completing any unfinished items likewise listed separately. Thereafter, the Construction Manager shall pay to the Subcontractors, monthly; the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the Subcontractors shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted, and instruction for the Owner's operating and maintenance personnel is complete.

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

ARTICLE 13

INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

- 13.1 The parties agree that 1% of the total compensation paid to the CONSTRUCTION MANAGER for performance of this Agreement shall represent the specific consideration for the CONSTRUCTION MANAGER'S indemnification of the OWNER as is set forth in the General Conditions and Contract Document.
- 13.2 It is the specific intent of the parties hereto that the indemnification below complies with Florida Statute 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.
- 13.3 CONSTRUCTION MANAGER shall indemnify and hold harmless the OWNER, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSTRUCTION MANAGER and persons employed or utilized by the CONSTRUCTION MANAGER in the performance of this construction contract. Regardless of the foregoing the indemnification herein shall be the greater of the CONSTRUCTION MANAGERS insurance coverage for such claim or One million dollars, whichever is greater.
- 13.4 The Owner shall be liable only to the extent of its interest in the Project, and no officer, director, partner, agent or employee of the Owner shall ever be personally or individually liable with respect to this Agreement or the Work. Any subcontract entered into by the Construction Manager shall include the foregoing limitation, which shall be effective in the event the Owner ever succeeds to the Construction Manager's rights and obligations under a subcontract.
- 13.5 Construction Manager's Insurance Construction Manager shall include all Subcontractors as insureds under its policies or shall be responsible for verifying and maintaining the Certificates provided by each Subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Owner reserves the right to request copies of Subcontractor's Certificates at any time. If Construction Manager does not verify Subcontractor's insurance as described above, Owner has the right to withhold payments to the Construction Manager until the requirements have been met.
- 13.5.1 The Construction Manager shall deliver the required bonds and proofs of insurance to the Owner prior to the commencement of any Work, and in no event any later than 10 days after the execution of this Agreement.
- 13.5.2 The Construction Manager shall, throughout the performance of its services under this Agreement and throughout the term of this Agreement maintain and provide to the Owner the insurance coverages listed in this Article. The insurance policies shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. The Construction Manager shall provide insurance that may not be reduced, terminated, or cancelled unless 30 days prior written notice thereof is furnished to the Owner. Certificates of insurance and copies of all policies (if required by the Owner) shall be furnished to the Owner within 10 days after the execution of this Agreement. In the event of any cancellation or reduction in insurance coverage, the Construction Manager shall obtain substitute coverage, without any lapse of coverage whatsoever. The insurance policies shall name the Owner, the Owner's representatives, and the officers,

directors, agents, employees and assigns of the Owner as additional insured (except for the professional liability and worker's compensation insurance).

13.5.3 The Owner may, in its sole discretion, procure and pay for the required Builders Risk insurance for the Project. In the event Owner elects to procure and pay for the Builders Risk insurance for the Project, the Construction Manager shall cooperate with Owner and provide any requested information for the procurement of the Builders Risk insurance.

13.5.4 The insurance required from the Construction Manager in this Article shall include all major divisions of coverage, and shall be on a commercial general basis including premises and operations (including X-C-U), Independent Construction Manager Hired Products and Completed Operations, and Owned, Non-owned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or others set forth in the Contract Documents, whichever is greater. All insurance shall be written on an occurrence basis, unless the Owner approves in writing coverage on a claims-made basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment.

13.5.5 The Construction Manager shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

13.5.6 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operation (including X-C-U as applicable)
2. Independent Construction Manager's Hired
3. Products and Completed Operations
4. Personal Injury Liability
5. Construction Manager liability including the provision for Construction Manager's obligation of indemnification and hold harmless
6. Owned, non-owned and hired motor vehicles
7. Broad Form Property Damage including Completed Operations

13.5.7 The insurance required by this Article shall be written for not less than the following, or greater if required by law.

1. Workers' Compensation:
 - (a) State: As required by Chapter 440, Florida Statutes
 - (b) Applicable Federal (e.g. Longshoremen's Statutory)
 - (c) Employer's Liability: \$500,000.00
2. Commercial General Liability (including Premises Operations; Independent Construction Manager Hired; Products and Completed Operations; Broad Form Property Damage):
 - (a) Bodily Injury:

\$1,000,000.00 per incident or occurrence; with an annual general aggregate per policy of not less than \$2,000,000

- (b) Property Damage:
\$1,000,000.00 per incident or occurrence; with an annual general aggregate per policy of not less than \$2,000,000.
- (c) Products and Completed Operations to be maintained for one year after final payment
- (d) Property Damage Liability Insurance shall provide S, C or U Coverage as applicable

3. Contractual Liability:

- (a) Bodily Injury:
aggregate per policy of not less than \$2,000,000.
- (b) Property Damage:
\$1,000,000.00 per incident or occurrence; with an annual general aggregate per policy of not less than \$2,000,000.

4. Personal Injury, \$1,000,000.00 per claimant; with an annual general aggregate per policy of not less than \$2,000,000

5. Commercial Automobile Liability: The State of Florida has no fault automobile insurance requirements. The Construction Manager shall be certain coverage is provided which conforms to any specific stipulation in the law.

- (a) \$1,000,000.00 per incident or occurrence combined single limit for bodily injury and property damage; with an annual general aggregate per policy of not less than \$2,000,000.

13.5.8 The Construction Manager shall procure property insurance for any portion of the Work stored off Site or in transit, and the cost for such shall be borne by the Construction Manager.

13.5.9 Boiler and Machinery Insurance. The Construction Manager shall purchase and maintain boiler and machinery insurance if applicable to the Contract Documents. This insurance shall remain in full force and effect until final acceptance of the insured items by the Owner.

13.5.10 Performance and Payment Bonds. The Construction Manager shall furnish bonds covering the faithful performance of the Agreement and payment of any and all obligations arising under the Agreement as required by Florida law. Upon request, the Construction Manager shall furnish a copy to any person or entity requesting a copy. Such bonds shall be in conformance and compliance with sec. 255.05, Florida Statutes, and shall contain the information and provisions set forth in the referenced section. Pursuant to sec. 255.05, the Construction Manager shall record the performance and

payment bonds in the public records of Indian River County, Florida. The Construction Manager shall provide the recorded copy of the bonds to the Owner.

13.5.11 Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Construction Manager, its Subcontractors, sub-Subcontractors, material suppliers, employees, or agents to the Owner or others. Any remedy provided to the Owner, or the Owner's officers, employees, agents or assigns, by the insurance shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise.

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

13.6 Waiver of Subrogation

13.6.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their sub-Subcontractor.

13.6.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all Subcontractors and their sub-Subcontractor.

13.6.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

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

**ARTICLE 14
TERMINATION OF THE AGREEMENT
AND
OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION**

14.1 Termination by the Construction Manager

If the Project is stopped for a period of thirty (30) days under an order of any court of other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon,

then the Construction Manager may, upon seven (7) days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

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

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

14.3 Termination by Owner Without Cause

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid Cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the GMP, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the

Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitment.

- (2) After the establishment of the GMP or at the completion of the Design Phase, if the final cost estimates or lack of funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1 plus any costs incurred pursuant to Articles 9 and 10.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign his interest in this agreement without the written consent of the other, except as to the assignment of proceeds.
- 15.2 This agreement shall be governed by the laws of the State of Florida.

ARTICLE 16

NOTICE OF CLAIM, WAIVER OF REMEDIES, NO DAMAGES FOR DELAY

- 16.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
 - (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - (b) The Construction Manager must submit a Notice of Claim to Owner and to the Architect-Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and
 - (c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in the above paragraph.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim.

The venue for all actions against the Owner shall be made in Indian River County, Florida.

- 16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus five percent (5%) for profit. The Construction Manager expressly agrees that the foregoing constitute its Sole and Exclusive Remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17

SUPPLEMENTARY CONDITIONS

- 17.1 When the Architect determines that the Work or designated portion thereof as defined in the Contract Documents is substantially complete, the Architect shall issue a Certification of Substantial Completion which establishes: the date of substantial completion; the "Substantial Completion Punch List", which establishes a single list providing feedback to the Construction Manager on non-conforming work, or work requiring further quality adjustments and must be developed within 30 calendar days of the date of substantial completion and delivered to Construction Manager within 5 calendar days thereafter; the date the Construction Manager will have completed all items on the Substantial Completion Punch List, and such other items as the Architect and Owner deem appropriate. The Certificate of Substantial Completion shall be executed by the Architect, Construction Manager and Owner. The Construction Manager will promptly engage in completing the Substantial Completion Punch List within 10 days of its issuance.

The Construction Manager agrees to the Punch List developed herein and process. Regardless of the foregoing, nothing herein shall alter the responsibility of the Construction Manager to complete all Construction services, material and items contracted herein by the Owner. The Owner shall have the right, but not the obligation, to withhold the Owners, Architects and or Engineers estimated cost of completion for such items on the Punch List referenced above. The Construction Manager by execution of the Contract agree to the same. Regardless of any provision to the contrary, the Owner may withhold from each of the Construction Manager's pay requests an amount not to

exceed Ten 10% of the payment as retainage until 50% of completion of the Work/Contract as determined by either the Owner or its Architect, Engineer or other consultant, as the case may be. The Construction Manager by execution of the Agreement hereby agree to the same. After 50% completion of the Work/Project as determined herein the Owner agrees to reduce the retainage to five (5) % of each draw schedule/pay request progress payment of the Construction Manager. Regardless of the foregoing, nothing herein shall require the Owner to reduce retainage to the Construction Manager if the Owner has determined that the Construction Manager is in default or if the Owner, or any of its consultants reasonably believes that the retainage and or future payments to the Construction Manager will not be enough for the Owner to complete the Project or cover its damages as a result of the Construction Manager's breach or default or for any other reason, or there is a good faith dispute by Owner against the Construction Manager or its bonding company. This provision shall not apply to any funds related to such federal funds.

With regard to uncompleted Punch List item(s), the Owner may withhold 150% of the uncompleted item(s) until satisfactorily completed by the Construction Manager. Regardless of the foregoing, the requirements herein do not apply to contracts less than \$200,000 in value.

ARTICLE 18

TAX EXEMPT OWNER DIRECT MATERIAL/EQUIPMENT PURCHASE PROGRAM

- 18.1 The Owner shall appoint the Construction Manager as the Owner's authorized representative with respect to any matter arising out of the purchase orders under this program. The Construction Manager will cooperate fully with the Owner with respect to the implementation of a tax exempt direct material/equipment purchase program involving the direct purchase of various construction materials, supplies and equipment that is currently part of this Contract. The Owner shall obtain, with the assistance of the Construction Manager, the proper authorization from the State of Florida in the form of a Technical Assistance Advisement (TAA).

The Owner Direct Purchase Program is attached hereto as Exhibit "AA," controls the Direct Purchase Program for the Project. The Direct Purchase Program will be operated in accordance with the following provisions:

- (a) The Owner will issue its own purchase orders directly to the third party vendor or supplier of material and equipment purchased under the Direct Purchase Program. The purchase order will be accompanied by the Owner's Exemption Certificate which includes its name, address, and the exemption number with issuance and expiration date.
- (b) All material and equipment purchased under the Direct Purchase Program is sold directly to the Owner and is directly invoiced by the vendor or supplier.
- (c) The Owner takes title and possession of all materials and equipment purchased under the Direct Purchase Program from the vendor or seller before they are incorporated into the Project.

- (d) The Owner assumes all risk of loss on all material and equipment purchased under the Direct Purchase Program. The Construction Manager cannot be held liable for damage or loss to the material or equipment.
 - (e) The Owner is responsible for and pays the premiums on all insurance and/or bonding on materials or equipment purchased under the Direct Purchase Program. The Construction Manager does not share any economic benefits of proceeds from bond or insurance covering risk of damage or loss of the material or equipment.
 - (f) The Owner makes direct payment to the third party vendor or seller for all purchases from its own funds or accounts for all purchases under the Direct Purchase Program.
- 18.2 The Owner agrees to process its purchase orders so that the progress of construction is not jeopardized. Should the Owner fail to process the purchase orders within a time frame so as not to delay the construction, the Construction Manager shall, at its sole discretion, void the Owner purchase order and purchase the item direct thereby waiving any rights the Owner may have for a direct purchase tax savings. Should the items included in the purchase order represent any materials, supplies or equipment that is part of a Subcontractor's scope of Work, any terms and conditions that the Subcontractors deems to be warranted to protect their interest, shall also be included and/or substituted. Vendors and suppliers must be approved by the Owner prior to the processing of purchase orders.
- 18.3 The items being purchased shall be purchased from the vendors and suppliers selected by the Construction Manager and/or the Subcontractor for prices negotiated by the Construction Manager and/or Subcontractor.
- 18.4 The Construction Manager is responsible for establishing an accounting system that will adequately track and monitor the direct purchases made by the Owner. The determination of the adequacy of the accounting system shall be mutually agreed upon between the Construction Manager and the Owner. The system developed by the Construction Manager shall track and monitor that materials purchased (and shall adequately identify the same), costs, tax savings, and such other charts of accounts or information as may be reasonable requested by the Owner. The Construction Manager shall submit a monthly accounting report of this information with the Construction Manager's application for payment.
- 18.5 The Construction Manager shall provide all rough drafts of purchase orders to the Owner for processing in such time and sequence that the Work will not be impeded or delayed in any manner. Notwithstanding anything in this Article 10.3 to the contrary, the Construction Manager remains fully responsible under its Contract with the Owner, and the implementation of this direct purchase program shall not be used in any manner by the Construction Manager to justify any delay unless such delay is a direct result of the Owner's failure to comply with the terms of the Direct Owner Purchase Program through no fault of the Construction Manager. Should a delay be incurred that is not the result of the Owner's failure, as stated above, the Construction Manager shall be held accountable for such a delay. The Construction Manager, for \$10.00 and other valuable consideration, the adequacy of receipt of which is hereby acknowledged and deemed to be sufficient,

does hereby release, waive and hold harmless the Owner from and against any claim for damages, acceleration damages, or any other matter, claim or damage that may arise from or be related to in any way the Owner's Direct Purchase Program to the extent stated herein.

- 18.6 The Construction Manager shall be responsible for all purchases in the same manner as if the Construction Manager had purchased the items, inclusive of managing the warranties for the Owner. The Construction Manager shall cooperate with the Owner and take all action necessary to assure that all warranties with respect to any materials or equipment which may be available from any vendor are passed-through to the Owner.
- 18.7 Modification of the Contract Sum will be made by one (1) change order (or additional change orders in the sole discretion of the Owner) prior to final payment unless the Contract period crosses the Owner's fiscal year, in which case, one (1) change order will occur for each fiscal year, one prior to the close of the first year, and the other during the second fiscal year.
- 18.8 The Construction Manager and its surety hereby agree that the performance bond penal amount shall be unaffected by any direct purchase deductive change order which is made pursuant to this program.
- 18.9 The Construction Manager agrees that its builder's risk insurance coverage amount shall be unaffected by any direct purchase deductive change order implemented pursuant to this program.
- 18.10 Payment shall be directly made by the Owner to the vendor for any Direct Purchases.
- 18.11 To the extent authorized under Florida law, Owner agrees to indemnify and hold harmless Construction Manager, its Subcontractors and suppliers of and from any claims, liability, or responsibility to the State of Florida for any action the State may take against any of them for the payment of any sales or use taxes as a result of Owner's direct purchase of such materials, supplies or equipment.
- 18.12 The Owner shall have the sole option to require the vendor to include a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and Construction Manager. The cost of the supply bond shall be included in Construction Manager's GMP.
- 18.13 The Owner agrees to make payments by the 15th of the month providing the Construction Manager processes the invoices and delivers same to the Facilities Division by the 20th of the preceding month.
- 18.14 Owner shall not withhold Retainage on any payments made to the vendor.

ARTICLE 19 MISCELLANEOUS

- 19.1 Apprentices If the Construction Manager employs apprentices on the Project, the behavior of the Construction Manager and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the state of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 19.2 Invoices Submitted Under Article 9 Invoices submitted under Article 9 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the state for travel expenses.
- 19.3 Construction Manager's Project Records The Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by Federal Law, and shall be made available to the Owner or his authorized representative at mutually convenient times. Project Records will be audited upon completion of project. If funds are found in audit to be owed to the Owner, the Construction Manager will be responsible for any deficiencies found, as well as the Auditor's fees.
- 19.4 Construction Manager's Payment Rights The Owner agrees to pay within 25 business days, providing the Construction Manager processes the application for payment and delivers same to the Facility Division Bookkeeping Department, as the single point of contact. The Owner will not withhold payment without proper and adequate justification.
- 19.5 Public Entity Crime Information Statement "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, Subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list." By signing this Agreement, Construction Manager certifies, to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a federal department or agency.
 - (b) Have not, within a five-year period preceding the issuance of RFQ # _____ been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - (c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).

- (d) Have not within a five-year period preceding the issuance of RFQ #_____ had one or more public transactions (federal, state or local) terminated for cause or default.

Construction Manager agrees to notify School Board within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, information, or terminations as described in paragraphs (a) – (d) above, with respect to Construction Manager or its principals.

- 19.6 Fiscal Funding This Contract is subject to fiscal appropriation and is subject to fiscal funding out in accordance with Florida Law.
- 19.7 Liquidated Damages Time is of the essence in the performance of the Work under the Contract Documents. The Owner and Construction Manager agree that the losses suffered by Owner, if Substantial Completion of the Work is not achieved, are not ascertainable at this time. Construction Manager acknowledges and agrees that, since time is of the essence, the Owner will suffer financial and other losses if Substantial Completion of the Work is not achieved within the Contract Time, as said Contract Time may be adjusted pursuant to the terms of the Contract Documents. Should the Construction Manager fail to achieve Certificate of Substantial Completion of the Work within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of \$0.00 for each calendar day thereafter until substantial completion is achieved and \$0.00 for each calendar day thereafter until Certificate of Final Inspection is achieved. Should the Construction Manager achieve Certificate of Substantial Completion of the Work within the Contract Time but fail to achieve Certificate of Final Inspection of the Work within its Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of \$0.00 for each calendar day thereafter until Certificate of Final Inspection of the Work is achieved. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Construction Manager fails to achieve Substantial Completion or Final Inspection of the Work within the Contract Time. Further, the parties acknowledge that it would be extremely difficult, if not impossible, to ascertain Owner's actual damages with any degree of certainty in the event Construction Manager fails to achieve either Substantial Completion or Final Inspection of the Work within the Contract Time.
- 19.8 Background Screening Requirement for Construction Managers The Construction Manager agrees to comply with all requirements of sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes and the School Board. This background screening will be conducted by the School Board in advance of the Construction Manager or its personnel providing any services under the conditions described in the previous sentence. The Construction Manager shall bear the cost of acquiring the background screening required by section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Construction Manager and its personnel. The

parties agree that the failure of the Construction Manager to perform any of the duties described in this section shall constitute a material breach of this agreement entitling the School Board to terminate immediately with no further responsibilities or duties to perform under this agreement. The Construction Manager agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Construction Manager's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes. Construction Manager shall require each of Construction Manager's subcontractors on the project to agree, in writing, to the provisions of this paragraph.

- 19.9 Defining Terms. Unless otherwise noted, the terms used in the Agreement shall have their ordinary and customary meanings as used in the industry.
- 19.10 Limitation of Liability. The Owner shall be liable only to the extent of its interest in the Project, and no officer, director, partner, agent or employee of the Owner shall ever be personally or individually liable with respect to this Agreement or the Work. Any subcontract entered into by the Construction Manager shall include the forgoing limitation, which shall be effective in the event the Owner ever succeeds to the Construction Manager's rights and obligations under a subcontract.
- 19.11 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise.
- 19.12 Gender. Unless the context clearly indicates to the contrary, pronouns having a neuter, masculine or feminine gender shall be deemed to include the others.
- 19.13 Entire Agreement. This Agreement and the Construction Documents incorporated herein by reference constitute the entire Agreement between the parties with respect to the matters covered by this Agreement. All prior negotiations, representations and agreements not incorporated in this Agreement are cancelled. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representative.
- 19.14 Binding Effect. Each and all of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon and inure to the benefits of the parties and their respective assigns, successors, subsidiaries, affiliates, holding companies and legal representatives, as allowed in this Agreement.
- 19.15 Notices. All notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) by delivering the same in person to such party, (i) personal delivery, or (ii) overnight courier, or (c) by facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any manner shall be effective

only if and when received by the party to be notified. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

If to Owner:

Facilities Division
The School District of Indian River County, Florida
1990 25th Street
Vero Beach, FL 32960

Construction Manager:

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

- 19.16 Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.
- 19.17 Captions. The headings used for the various portions of this Agreement and the Construction Documents are inserted only as a matter of convenience, and for reference, and in no way define, limit or describe the scope or the intent of this Agreement, any section of this Agreement, or any section of the Contract Documents.
- 19.18 Severability. In the event the provisions of this Agreement are determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.
- 19.19 Cumulative Remedies. All rights, powers, remedies, benefits, and privileges are available under any provision of this Agreement to any party, is in addition to and cumulative of any and all rights, powers, remedies, benefits and privileges available to such party under all other provisions of this Agreement, at law or in equity.

- 19.20 Approval. Whenever any review or approval is required by any party, such party agrees that such review or approval will be promptly and expeditiously prosecuted to conclusion.
- 19.21 Further Assurances. The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.
- 19.22 No Partnership or Joint Venture. It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the parties or any third party, or cause any party to be responsible in any way for the debts and obligations of the other party.
- 19.23 No Construction Against Drafter. Each of the parties have been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorably or unfavorably against any party.
- 19.24 Third Party Beneficiary. This Agreement has been made and entered into for the sole protection and benefit of the Owner, and its respective successors, and no other person or entity shall have any right or action under this Agreement.
- 19.25 Force Majure. With regard to the performance under this Agreement, a party shall not be deemed to be in default of this Agreement, or have failed to comply with any term or conditions if, for reasons beyond the parties reasonable control, including without limitation acts of God, natural disaster, labor unrest, war, declared or undeclared, the existence of injunctions or requirements for obtaining licenses, easements, permits or other compliance with applicable laws, rules and regulations, such performance is not reasonably possible within such time periods, then the time for such performance shall be extended until removal of such reasons beyond the parties reasonable control, provided that the party commences such performance as soon as reasonably possible and diligently pursues such performance.
- 19.26 Waiver of Jury Trial. The parties expressly waive the right to a jury trial.
- 19.27 Dispute Resolution. Prior to initiating any litigation arising out of the Agreement, the parties to submit the dispute to non-binding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees, and the cost of the mediator shall be split between the parties.
- 19.28 Right to Enter this Agreement. Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performances and obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full

right and authority to enter into this Agreement and to perform its obligation under this Agreement. Upon written request, each party agrees to supply the other party with evidence of its full right and authority.

- 19.29 Conduct While on School Property. The Construction Manager acknowledges that its employees and agents must behave in an appropriate manner while on the premises of any school facility and shall at all times conduct themselves in a manner consistent with School Board policies and subject to the administrator or designee. It will be considered a breach of this Agreement for any agent or employee of the Construction Manager to behave in a manner which is inconsistent with good conduct or decorum, or to behave in any manner which will disrupt the educational program or constitute any level of threat to safety, health, and well being of any student or employee of the School Board. The Construction Manager agrees to immediately remove any agent or employee if directed to do so by the building administrator or designee.
- 19.30 Owner Transfer of Interest. If the Owner conveys its interest in the Project to a third party, any rights which the Owner may have against the Construction Manager arising from this Agreement shall automatically transfer to such third party without the necessity of a written document or consent from the Construction Manager.
- 19.31 No Waiver of Sovereign Immunity. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
- 19.32 Non-Discrimination. The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.
- 19.33 Compliance with Federal Grant Requirements. If made applicable by the use of federal grant funds in the Project or any other requirement as set out below, Construction Manager and its subcontractors shall comply with the following enactments, rules, regulations and orders:

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

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

Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in

excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

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

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

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

By: _____

Title: President

Witness:

By: _____

SCHOOL BOARD OF INDIAN RIVER COUNTY

By: _____

Title: Board Chairman

Witness:

By: _____

Title: Superintendent

Exhibit AA

Owner Direct Material/Equipment Purchase Program

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

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

2. Material suppliers shall be selected by the Subcontractor awarded the subcontract.

The Subcontractor has included the price for all construction materials in his bid. Owner Purchasing of construction materials, if selected, will be administered on a deductive Change Order basis.

3. Subcontractor shall provide Construction Manager a list of all intended suppliers, vendors, and material men for consideration as Owner-Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values. The Subcontractor shall submit a description of the materials to be supplied, estimated quantities and prices.

4. Upon request from Construction Manager, and in a timely manner, Subcontractor shall prepare a standard Purchase Order Requisition Form in a form acceptable to the Owner and the Construction Manager, to specifically identify the materials which Owner had, at its sole option, elected to purchase directly. The Purchase Order Requisition Form shall include:

- A. The name, address, telephone number and contact person for the material supplier.
- B. Manufacturer or brand, model or specification number of the item.
- C. Quantity needed as estimated by the Subcontractor.
- D. The price quoted by the supplier for the materials identified therein.
- E. Any sales tax associated, with such quote.
- F. Delivery dates as established by Subcontractor.

Subcontractor shall include reference to any terms and conditions which have been negotiated with the vendors; i.e., payment terms, warranties, retainage, etc.

Such Purchase Order Requisition Forms are to be submitted to Construction Manager's designated representative no less than fifteen (15) days prior to the need for ordering such Owner-Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that, such Directly Purchased Materials may be directly purchased by Owner and delivered to the Project site so as to avoid any delay to the Project.

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

- Subcontractor shall assure that each delivery of Owner-Purchased materials is accompanied by adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's Representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The Subcontractor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Finance Department for processing and payment in the manner as all other Indian River School District invoices are processed. The Owner shall have the right to assign personnel to verify and audit the accuracy of all Director Purchase Documents.
10. The Subcontractor shall insure that Owner-Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective, and whether such materials are identical to the material ordered and match the description on the bill of lading. If the Subcontractor discovers defective or non-conformities in the Owner-Purchased Material upon such visual inspection, the Subcontractor shall not utilize such non-conforming or defective materials in the work and instead shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Subcontractor shall notify the Owner, through the Construction Manager, of such occurrence. If the Subcontractor fails to perform such inspection and otherwise incorporated Owner-Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, Subcontractor shall be responsible for all damages to Owner resulting from Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or non-conforming, the Subcontractor shall promptly take action to remedy the defect or non-conformance so as not to delay the work.
 11. The Subcontractor shall maintain records of all Owner-Purchased Materials it incorporates into the work from the stock of Owner-Purchased Materials in its possession. The Subcontractor shall account monthly to the Owner, through the Construction Manager, for any Owner-Purchased Materials delivered into the Subcontractor's possession, including portions of all such materials which have been incorporated into the work.
 12. The Subcontractor, as the Owner's agent, shall be responsible for obtaining and managing all warranties and guarantees for all material and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Subcontractor for resolution with the appropriate supplier or vendor.
 13. Notwithstanding the transfer of Owner-Purchased Materials by the Owner to the Subcontractor's possession, the Owner shall retain title to any and all Owner-Purchased Materials.
 14. The transfer of possession of Owner-Purchased Materials from the Owner to the Subcontractor shall constitute a bailment for the mutual benefit of the Owner and the Subcontractor. The Owner shall be considered the bailor and the Subcontractor the bailee of the Owner-Purchased Materials. Owner-Purchased Materials shall be considered returned to the Owner for the purposes of its bailment at such time as they are

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

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

EXHIBIT A

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

OWNER

**SCHOOL BOARD OF INDIAN RIVER COUNTY
1990 25TH STREET
VERO BEACH, FL 32960**

ARCHITECT

CONSTRUCTION MANAGER

EXHIBIT B

OWNER'S CONSTRUCTION BUDGET

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
Construction Budget	\$
Planning & Design	\$
Furniture, Fixtures & Equipment	\$
Extraordinary Expenses	\$ _____
 Total Owner's Construction Budget	 \$

EXHIBIT C

CONSTRUCTION MANAGER'S PERSONNEL

ON-SITE SUPPORT STAFF

INDIVIDUAL

TITLE

EXHIBIT D

A schedule of incomplete or unsatisfactory items listed for completion indicating completion dates for the Owner's review.

EXHIBIT E

Notice to Owner that project is ready for final inspections.

EXHIBIT G

**CONSTRUCTION MANAGER'S PERSONNEL
(TO BE ASSIGNED DURING DESIGN PHASE)**

EXHIBIT H

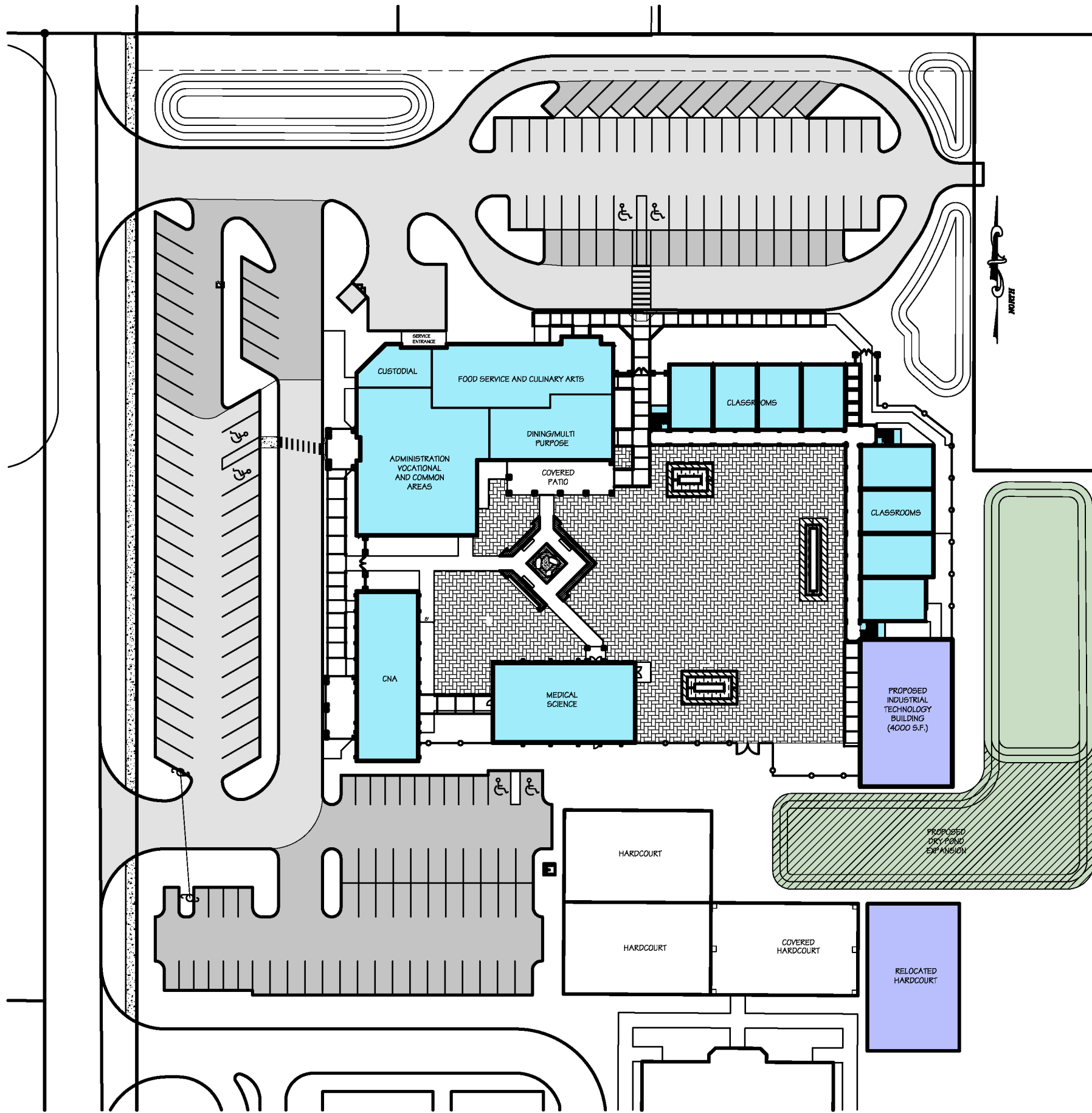
CONSTRUCTION MANAGER'S PER DIEM STAFF FOR TIME

(EXTENSIONS PER 8.1.2(1) (b))

<u>INDIVIDUAL</u>	<u>TITLE</u>	<u>PERCENTAGE AVAILABLE</u>
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EXHIBIT K

Standard AIA Documents G702-703, Application and Certification for Payment.



PARKING REQUIREMENTS

SREF - Vocational/College = 1 parking space per 2 Students

SREF PARKING REQUIRED PHASE I:

CNA – 35 Students = 18 cars
Admin/Custodial – 26 Employees = 26 cars
Culinary Classroom – 20 Students = 10 cars
Classroom Bldg. – 200 Students = 100 cars
Medical Science Bldg. – 15 Students = 8 cars

Phase I Proposed Vocation Classroom Bldg. – 20 Students =10 Cars

Total Cars Required Phase I 172 Cars

Existing Parking – 82 cars

Phase I New Parking Provided – 90 cars

Total Cars Provided Phase I 172 Cars

LEGEND

Existing Pavement



New Pavement



Existing Buildings



New Buildings



Existing Retention Area



New Retention Area



01 CONCEPTUAL SITE PLAN - PHASE I

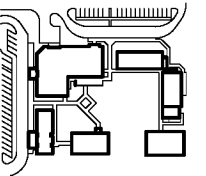
Scale: 1"=30'

Project:

SCHOOL BOARD OF
INDIAN RIVER COUNTY, FLORIDA
**GIFFORD
ADULT
EDUCATIONAL
CONCEPTUAL
SITE PLAN**

GIFFORD, FLORIDA

Key Plan:



Issues:

No.:	Date:	Description:
A.	04.12.17	CLIENT REVIEW
B.	05.16.17	CLIENT REVIEW
C.	06.6.17	CLIENT REVIEW

Architect:



**DONADIO
& Associates, Architects P.A.**

6009 17th Street
Vero Beach, FL 32960
Tel: 772.394.2829
Fax: 772.394.2830
License No. AA0002255
www.donadio-arch.com

Consultants:

Drawing Title:

CONCEPTUAL SITE PLAN
PHASE I

Reference North



Dwn: MT Dwg. File:
Chd: XREF File:
Project No.: 2017-15 Plot File:
Sheet No.:

Date Signed:

AS0.11