

FORM OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MANAGEMENT at RISK SERVICES

SECTION 00510

THIS AGREEMENT made this 19<sup>th</sup> day of October in the year Two thousand and Six.

Between the Owner;                   **THE SCHOOL DISTRICT OF PALM BEACH COUNTY, FLORIDA,**

And the Construction Manager: **W.G. MILLS, INC.**  
**8895 N. MILITARY TRAIL, SUITE 102-E**  
**PALM BEACH GARDENS, FL 33410**  
**PHONE: 561-691-0060**  
**FAX: 561-691-0055**

**THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Owner-Construction Management at Risk Services Agreement, the Performance and Payment bonds, Notice to Proceed, Request for Proposal document including all Exhibits by the Construction Manager, Proposal in response to Request for Proposal Document, documentation submitted by the Construction Manager prior to Notice to Proceed, the documentation submitted by Construction Manager following Notice to Proceed, General Conditions, Supplementary Conditions and Special Conditions, the Educational Specifications, Preliminary and Final Drawings, the Project Manual, Contents of the Published Request for Proposal and all Addenda issued prior to Proposal submission deadline and all Modifications issued after. These form the Contract, and all are fully a part of the Contract as if attached to this Owner-Construction Management at Risk Services Agreement or repeated herein.

**THE WORK**

The Construction Manager shall perform all the Work required by the Contract Documents for:

**PROJECT NAME: WEST BOYNTON AREA ES (03-Z)**  
**PROJECT NO: 0281-8243**

**SCOPE OF WORK**

This project will consist of Construction Management at Risk Services required for the construction of a 122,900 GSF, 960 student capacity, K-5 elementary school and related playground and athletic facilities. The new school shall be constructed to allow for the future addition of a generic 1,300 student capacity middle school facility that will incorporate shared athletic fields with the County park site planned for property adjacent to the south of the school site.

The construction shall incorporate all of the requirements set forth in the Educational Specifications, District Master Specifications, Florida Building Code, Florida Accessibility Codes and all other applicable specifications.

## 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 and the Construction Manager warrants that he has read those sections of the current Florida Building Code pertaining to Construction Management and agrees to perform to its standards and rules.

#### **1.1 The Construction Team**

The Construction Manager, the Owner or the Owners Project Representative 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 during the design phase with support from the Construction Manager and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The specific representatives of the Construction Team are shown in the completed Exhibit D of the Request for Proposal Document.

#### **1.2 Extent of Agreement**

This Agreement between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The Owner will issue an Agreement with the Construction Manager for Pre-Construction services and fees as described herein.

When Construction Documents, drawings, specifications and other descriptive documents defining the work to be included in the Guaranteed Maximum Price (GMP) are of sufficient detail to be acceptable to the Owner, the Agreement for each Phase(s) accepted by the Owner shall be amended 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 three (3) 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 Owners Project Manager along with his GMP proposal, while keeping one set for himself and returning one set to the Architect-Engineer.

This Agreement shall not be superseded by any provisions of the documents for construction 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, construction, code inspection and final inspections necessary to build the component parts of the project which shall be identified in the GMP (Exhibit B).

**Owner:** The entity that will occupy, use and own the project upon substantial completion is the School District of Palm Beach County. The funds which compensate the Architects, Engineers, Construction Managers, etc. are under the sole control of the School District of Palm Beach County.

**Permitting Authority:** The School Board of Palm Beach County.

**Construction Manager:** The firm designated by the Owner to provide all Work required by the Contract Documents described herein: **W.G. MILLS, INC.**

**Architect-Engineer:** The firm(s) designated by the Owner to provide professional design services related to the Project described herein: **ZYSCOVICH, INC.**

**Owner's Authorized Representative:** A designated representative fully acquainted with the project with authority to render decisions necessary to expedite the project.

**Project Manager:** The person designated by the Owner or Owner's Authorized Representative to provide direct interface with the Construction Manager with respect to the Owners responsibilities.

**Estimate:** The Construction Managers latest estimate of probable project construction cost.

**Phase:** A clearly defined subset of work isolated for the purpose of expediting the entire Project to completion. The sum of all Phases is equal to the Scope of Work of the Project.

#### **1.4 Owner's Construction Budget**

Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is **\$19,885,064**. This acknowledgment 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.

## **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 Pre-Construction Phase Activities**

Services which the Construction Manager shall provide include, but are not limited to, those described or specified herein.

- (a) Provide or review project requirements, educational specifications, on-site and off-site development, survey requirements, deed and municipal requirements / restrictions, preliminary budget and make recommendations for revisions.
- (b) Prepare project schedule which clearly illustrates critical path elements, responsibilities of the owner, CM, architect, contractor and outside agencies and update monthly throughout the duration of the contract.
- (c) Provide project delivery options for the design, bid and bid packaging of projects for efficient scheduling, cost control and financial resource management.

- (d) Utilize an information and reporting system acceptable to the Owner to provide the Board with accurate and current cost control, work status, including by not limited to work narrative, work completed / anticipated, schedules, estimated expenditures and project accounting systems of the project at all times.

- (e) Provide a project manual, which shall describe, as a minimum, the work plan, job responsibilities and written procedures for reports, meetings, inspections, changes to the project, etc.
- (f) Provide market analysis and motivation for contractor interest for the publicly opened bids and recommendations for minority business participations.

### **2.1.1 Project Management Information System (PMIS)**

(1) Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all sub systems of the Project Management Information System hereinafter referred to as PMIS.

(2) The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly and shall accompany each pay request.

(3) If requested by the Project Manager, the Construction Manager shall conduct a comprehensive workshop in West Palm Beach for participants designated by the Project Manager and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's Representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.

(4) The PMIS shall be described in terms of the following major sub systems:

- (a) Narrative Reporting, on a monthly basis,
- (b) Schedule Control, on a monthly basis,
- (c) Cost Control, and estimating,
- (d) Project Accounting,
- (e) Accounting and Payment, and
- (f) Action Reports.

### **2.1.2 Narrative Reporting Subsystem**

(1) The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8 ½" X 11 " formats.

(2) The Narrative Reporting Subsystem shall include the following reports:

- (a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems of 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-Contractors. 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) A Daily Construction Diary during the construction phase describing events and conditions on the site.
- (g) A monthly Minority/Women Business Enterprise report during the construction phase summarizing the participation of certified minority Sub-Contractors /material suppliers for the current month, and project to date. The report shall include the names, addresses, and dollar amount of each certified M/WBE participant.
- (h) 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 (g) 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. A disk copy of the reports, in a compatible format, will also be provided with the pay request.

(4) The report outlined in subsection (2)(f) above shall be maintained at the site available to the Owner and Architect-Engineer. A copy, bound, of the complete diary shall be submitted to the Owner at the conclusion of the project.

### **2.1.3 Scheduled Control Subsystem:**

(1) Master Project Schedule - Upon award of this Contract, the Construction Team, shall submit a master project schedule covering the entire project, from planning and design approvals, to construction, Owner occupancy and final completion of the Project. This schedule will serve as the framework for the subsequently development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project.

(2) Construction Schedule and Requirements for Overtime Work - for Projects with Construction Costs in Excess of \$1,000,000.00 within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Architect-Engineer a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as necessary steps, 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. An example of an acceptable form of such a construction schedule is contained Appendix I of Corps of Engineers' Regulation ER-1-1 1 entitled "Network Analysis System", a copy of which is available to the Construction Manager from the Architect, upon request.

Another form of construction schedule which provides the same kind of information and employs the same basic principles as illustrated in Appendix I of the Corps of Engineers' Regulation ER 1-1-11 will be acceptable to the Owner if used by the Construction Manager; provided, however, that the Architect-Engineer shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to find the Construction Manager in substantial default and certify to the Owner that sufficient cause exists to terminate the contract or to withhold any further payment.

Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, 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 or schedule update acceptable to the Architect-Engineer is submitted.

The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

- (a) Phasing Schedule – To expedite the Project's completion, the Construction Manager may recommend the Project to be divided into Phases, with each Phase having a clearly defined Scope of Work, commencement and completion date. Any Phasing of the Project must be approved by the Owner. If approved, all current and future schedules shall reflect this Phasing.
- (b) Pre-Bid Schedules (Subnetworks): 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 interrelationships between the work of the successful bidder and that of other Sub-Contractors, and shall establish milestones keyed to the overall master schedule.
- (c) Sub-Contractor Schedules (Subnetworks): Upon the award of each sub-contract, the Construction Manager shall jointly with the Sub-Contractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other Sub-Contractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the Sub-Contractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
- (d) Occupancy Schedule: The Construction Manager shall jointly develop with the Architect-Engineer and Owner- Owner's Representative a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

#### **2.1.4 Cost Control Subsystem:**

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

- (a) At Completion of Advanced Schematic Design Phase For Each Item or Bid Package.
- (b) At Completion of Design Development Phase For Each Item or Bid Package.
- (c) At Completion of 50% Construction Documents Phase For Each Item Or Bid Package.
- (d) Within 10 (ten) days of any Change Order or Construction Change Directive being proposed.

#### **2.1.5 Project Accounting Subsystem:**

(1) The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

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



### **2.1.6 Project Manual:**

(1) Upon award of contract the Construction Manager shall develop a draft Comprehensive Project Manual describing the services set forth in this Contract. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of Key personnel, responsibilities of Construction Manager, Owner and Architect-Engineer; work flow diagrams; and strategy for bidding the work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Five copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.

Contents of Project Manual: The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:

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

### **2.2 Pre-Construction Phase Services:**

Services which the Construction Manager shall provide include, but are not limited to, those described or specified herein:

- (a) Provide value engineering recommendations to maximize the board's capital outlay and operations resources.
- (b) Attend all project related meetings and record proceedings.
- (c) Periodically review all design documents for constructability and compliance with applicable laws, rules, codes, design standards and ordinances.
- (d) Periodically update cost estimates and make recommendations to keep the project within the budget.
- (e) Periodically update the project schedule and make recommendations for recovery of lost time and shortening the construction schedule.
- (f) Secure and monitor the review and approval process of governing authorities.
- (g) Maintain a list of potential bidders and subcontractors and solicit bidders, including minority participation.
- (h) Monitor and review all addenda and coordinate code review compliance.
- (i) Prepare and issue bid packages, open and evaluate bids from at least three (3) bidders for each trade package and provide written recommendations.
- (j) Schedule and conduct all pre-construction bid conferences.
- (k) Receive and review pre-contract documents as required.
- (l) Review the schedule of values for balance of tasks vs. dollars and compliance with the project schedule.
- (m) Review contracts and make recommendations.
- (n) Provide guaranteed maximum price.
- (o) Provide value engineering during subcontractor bidding phase.
- (p) Hold contracts and subcontracts; provides bonding for projects.

### **2.2.1 Design Review and Recommendations:**

(1) Review and Recommendations and Warranty: The Construction Manager shall become thoroughly familiar 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 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) Review Reports and Warranty: Within 45 days after receiving the Construction Documents for each phase of the project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in Paragraph (3). 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 2.3(5).

**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 CONSTRUCTION TIME. – DISCLAIMER OF WARRANTY: THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT AND/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 supplies, etc). When each item is identified, the Construction Manager shall notify the Sub-Contractors, 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 sub-contracts. 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 Sub-Contractors or suppliers, manufacturing or fabricating such items and advise Project Manager, Owner and Architect-Engineer of any problems or prospective delay in delivery.

### **2.2.2 Separate Contracts Planning:**

(1) The Construction Manager shall review the design with the Architect Engineer and make recommendations to the Owner and to the Architect-Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.

### **2.2.3 Interfacing**

(1) The Construction Manager shall take such measures as- appropriate to provide that construction requirements will be covered in the separate sub-contracts for procurement of long lead items, the separate construction sub-contracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate sub-contract, its schedule for start and completion and its relationship to other separate Construction Managers.

Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.2.1 comments on overlap with any other separate sub-contracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Project Manager and Architect-Engineer may arrange for necessary corrections.

#### **2.2.4 Market Analysis and Stimulation of Bidder Interest**

(1) 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 procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.

(2) Within 30 days of commencement of Pre-Construction services the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders (including M/WBE). 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.

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

#### **2.2.5 Solicitation of Bids and Proposals**

(1) For all contracts exceeding \$25,000.00, the Construction Manager shall establish a project qualification procedure for applicable procurements and sub-contract trades prior to issuing an invitation to bid or request for proposal (RFP). The opportunity to qualify shall be advertised a minimum of once a week for three (3) consecutive weeks in a local newspaper with general circulation. Only those bidders that are determined by the Construction Manager to be qualified shall be deemed responsible and invited to provide an invitation to bid or written proposal.

(2) For each separate construction contract exceeding \$25,000.00, the Construction Manager shall, unless waived by Owner, conduct a pre-proposal conference with prospective proposers, the Architect-Engineer and Project Manager. A minimum five (5) day notice to prospective proposers is required for all pre-proposal conferences. In the event questions are raised which require an interpretation of the proposal documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect-Engineer. The Architect-Engineer shall prepare an addendum which provides necessary clarifications or corrections to the proposal document and the Construction Manager shall issue same to all of the prospective bidders.

(3) As part of such preparation, the Construction Manager shall review the specifications' and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Manager and Architect-Engineer in written form.

(4) Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal (RFP) for all procurements of long lead items, materials and services, for Sub-Contractor contracts and for site utilities. Such RFP's shall be prepared in accordance with the following guidelines:

(a) Contracts not exceeding \$25,000.00 may be entered into by the Construction Manager with the firm who submits the lowest written quotation. The Construction Manager shall obtain a minimum of three (3) written 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.

(b) Contracts exceeding \$25,000.00 may be entered into by the Construction Manager with the firm who is qualified and submits the lowest responsive and responsible proposal. The Construction Manager shall provide a RFP to at least three (3) firms to submit sealed written proposals based on written drawings and/or specifications. Written proposals shall be opened publicly at the location, date and time named by the Construction Manager in the RFP. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm.

### **2.3 Construction Phase Services**

Services which the Construction Manager shall provide include, but are not limited to, those described or specified herein.

- a) Provide contract administration and approval of payments; monitor and record the construction progress; review and approve as-builts, maintenance and warranty manuals from all subcontractors; provide limited construction services and keep a log of all site visits and observations.
- b) Develop and implement procedures to monitor, record, review and approve all submittals, shop drawings, change orders, pay request and field orders for budget and schedule impact and compliance with the contract documents.
- c) Provide inspection of all work, materials and tests prior to substantial completion and occupancy inspections by appropriate certified inspectors.
- d) Ensure that as-builts are being kept up to date by the contractor.
- e) Make recommendations for correction of nonconforming or substandard work.
- f) Coordinate ordering and delivery of owner supplied equipment.
- g) Coordinate the testing, inspections and approvals of project, delivery of instructions for operating all building systems, including training or maintenance staff for the owners.
- h) Prepare final project accounting and provide written evaluation of the A/E and major subcontractors.
- i) CM may perform construction services if approved by board and upon justification of benefits to contract such as savings in cost, in time, improved quality or other issues relevant to delivery of the project within terms of the contract. CM may perform construction services as authorized by law in cases of emergency under procedures approved by the board.
- j) Assist owner in completion of warranty work during the warranty period.
- k) Assist owner in the warranty inspections and completion of all required warranty work generated by the inspections.
- l) Close out and transfer of the project to the maintenance department including the delivery of as-builts, warranties, guaranties and operating instructions.

### **2.3.1 Construction Manager's Staff**

(1)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 Sub-Contractors and he shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "D" to this agreement. He shall not change any of those persons named in Exhibit "D" unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

### **2.3.2 Job-Site Facilities**

(1)The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager, the Owner's Representative and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

### **2.3.3 Field Offices and Sheds**

(1) Office: To be weather-tight with lighting, electrical outlets, heating, cooling and ventilating equipment. Office trailer should be at least 12x60 with bathroom (working) and running water. Offices front and rear, counter tops in each end office w/2 drawers fireproof legal filing cabinets, center conference area, plan rack, plan table. Cleaning service to insure the office is clean at all times.

Office Equipment to consist of a minimum of the following:

- (a) 2 executive desks
- (b) 2 office chairs
- (c) 1 secretary desk
- (d) 1 secretary chair
- (e) Copier with 11x17 capabilities
- (f) Fax machine (preferred HP fax, scanner, copier 700)
- (g) Conference table with 10 chairs
- (h) Seven (7) working phone lines (general contractor to pay for 3 working services)
- (i) 2-4 drawer legal file cabinets (lockable)
- (j) Water Cooler and Water delivery
- (k) Coffee maker and coffee service
- (l) Microwave and small refrigerator
- (m) Three (3) PC's (Pentium Processor) with internet access 56K or better
- (n) Office Supplies Contract

(2) All offices and sheds to be anchored to the ground to withstand 110 M.P.H. X1.1 wind.

(3) Office trailer to have signage reading School District of Palm Beach County Office

(4) 3 designated parking areas.

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

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

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

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

#### **2.3.4 Labor and Materials**

(1) Construction Management (CM) at Risk Services shall provide to the Owner for approval a written statement setting forth the portion of the Work he shall provide. Once approved, no changes shall be made to this written statement without prior written approval of the Owner.

#### **2.3.5 Lines of Authority**

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

#### **2.3.6 Schedule and Project Manual Provisions**

(1) The Construction Manager shall provide Subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the approved Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2.1.3 and 2.1.6 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to Sub-Contractors and suppliers. He shall also continue to provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his Sub-Contractors 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.

(2) The schedule shall include all phases of the construction work, material supplies, long lease 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. He shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the Sub-Contractors and the Architect-Engineers Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all Sub-Contractors.

### **2.3.7 Quality Control**

(1)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 Sub-Contractors 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 Sub-Contractor 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.

### **2.3.8 Sub-Contractor Interfacing**

(1)The Construction Manager shall be the single point of interface with all Sub-Contractors 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 Sub-Contractors 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 Sub-Contractor for fabrication or revision. The Construction Manager shall maintain a 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 Sub-Contractors 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.

### **2.3.9 Contractor / Subcontractors Access To School Site**

(1) Construction Manager shall not start work at school site without advance notification to the principal or his/her designee regarding the following:

- a) The nature of the work
- b) The time schedule of the work
- c) Other conditions that may be required to accomplish said work

All contractor / vendors must sign in and out at the school's front office whenever they are at a school facility.

### **2.3.10 Permits**

(1)The Construction Manager shall secure all necessary building permits from the Permitting Authority (The School District of Palm Beach County). Any and all other necessary permits including utility connection permits, the cost of which shall be considered a direct cost item, shall also be obtained by the Construction Manager.

### **2.3.11 Bonds**

(1)In accordance with the provisions of Section 255.05, Florida Statutes prior to commencement of construction, 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 construction cost as defined in Article 9 and inclusive of the Construction Manager's fees. These bonds shall continue in effect for one (1) year after completion and acceptance of work.



To be acceptable to the School District of Palm Beach 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 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 \$500,000.00, 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.

<b>CONTRACT AMOUNT</b>	<b>HOLDER'S RATING</b>	<b>REQUIRED RATING</b>
UP TO 5,000,000	A-	CLASS V
5,000,000 TO 10,000,000	A-	CLASS VI
10,000,000 TO 25,000,000	A-	CLASS VII
25,000,000 TO 50,000,000	A-	CLASS VIII
50,000,000 TO 100,000,000	A-	CLASS IX

2. The Surety Company shall not expose itself to any loss on any one risk in a amount exceeding ten (10) percent of its surplus to policyholders, provided:

- (a) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
- (b) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

### **2.3.12 Job Site Requirements**

- (1) The Construction Manager shall provide for each of the following activities as a part of his Construction Phase fee:
  - (a) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
  - (b) Maintain a roster of companies on the project with names and telephone numbers of key personnel.

- (c) Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
  - (d) Provide labor relations management for a harmonious, productive project.
  - (e) Provide a safety program for the project to meet OSHA requirements. Monitor for Sub-Contractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable safety practice.
  - (f) Provide a safety meeting with principal and school staff prior to starting work on existing site.
- (2) The Construction Manager shall provide personnel to provide each of the following:
- (a) Schedule the services of independent testing laboratories which provide the necessary testing of materials to ensure conformance to contract requirements.
  - (b) The printing and distribution of all required documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

### **2.3.13 Job Site Administration**

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

- (a) Job Meetings: Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each Sub-Contractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

In addition, regular project status meetings will be held between the architect, owner and Construction Manager either biweekly or monthly, whichever is designated by the Project Manager.

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

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

- (b) Shop Drawing Submittals/Approvals: Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- (c) Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, to the affected Sub-Contractor 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 Sub-Contractors 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.

- (d) Payments to Sub-Contractors: Develop and implement a procedure for review, processing, and payment of applications by Sub-Contractors 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 Sub-Contractors work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority Inspectors.
- (g) Sub-Contractor's Progress: Prepare periodic punch lists for Sub-Contractors work including unsatisfactory or incomplete items and schedules for their completion.
- (h) Substantial Completion: Ascertain and determine when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect-Engineer will prepare the pre-substantial punch list from which the Construction Manager will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion (G704) when all the work on his pre-substantial punch list has been accomplished (Exhibit F).
- (i) Final Completion: Monitor the Sub-Contractor'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 Contract Completion form shown in Exhibit G.
- (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 electrical Sub-Contractors 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.

(2) 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 Sub-Contractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above. The Construction Manager shall review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this project. The disks shall be submitted to the Architect-Engineer when completed, together with two sets of blue-line or black-line prints for certification and forwarding to the Using Agency, at the time of final completion.

### **2.3.14 Administrative Records**

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

- (a) Contracts or Purchase Orders
- (b) Shop Drawing Submittal/Approval Logs
- (c) Equipment Purchase/Delivery Logs-
- (d) Contract Drawings and Specifications with Addenda
- (e) Warranties and Guarantees
- (f) Cost Accounting Records:
- (g) Sales Tax Recovery Status Report
- (h) Labor Costs
- (i) Material Costs
- (j) Equipment Costs
- (k) Cost Proposal Requests
- (l) Payment Request Records
- (m) Meeting Minutes
- (n) Cost-Estimates
- (o) Bulletin Quotations
- (p) Lab Test Reports
- (q) Insurance Certificates and Bonds
- (r) Contract Changes
- (s) Purchase Orders
- (t) Material Purchase Delivery Logs
- (u) Technical Standards
- (v) Design Handbooks
- (w) As-Built" Marked Prints
- (x) Operating & Maintenance Instruction
- (y) Daily Progress Reports
- (z) Monthly Progress Reports
- (aa)Correspondence Files
- (bb)Transmittal Records Inspection Reports
- (cc)Bid/Award Information
- (dd)Bid Analysis and Negotiations
- (ee)Punch Lists
- (ff)PMIS Schedule and Updates
- (gg)Suspense (Tickler) Files of Outstanding Requirements
- (hh)Project Manual
- (ii)Material Safety Data Sheet - MSDS

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

### **2.3.15 Weather Protection**

(1)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.

### **2.3.16 Owner Occupancy**

(1) 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. He shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Construction Managers, "on line" in such conditions as will satisfy Owner operational requirements.

- (a) He shall conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.
- (b) He 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.
- (c) He shall provide a comprehensive list of all machinery and equipment installed during the project.
- (d) He 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.
- (e) He shall continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.

(2) The Owner will not occupy or take control of the entire 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 2.3.14 (h), 2.3.14 (j), 2.3.14 (k) and 2.3.17 have been completed to the Owner's satisfaction excluding the requirements for a warranty inspection Twelve (12) months after Owner Occupancy.

### **2.3.17 Warranty**

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

## **ARTICLE 3**

### **OWNER'S RESPONSIBILITIES**

#### **3.1 Owners 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.

### **3.3 Architect and Engineers 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 upon request. 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, for the site of the project, all surveys describing the physical characteristics, soil reports, subsurface investigations, legal limitations, utility locations, covenants, deed restrictions and a legal description.

### **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 as reimbursables to the Construction Manager.

### **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 may be required.

### **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 & 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 Owners 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 Sub-Contractors 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. The school Principal has no direct contract authority. Any work accomplished at the principal's direction is "at risk".

### **3.13 Permitting & Code inspections**

The Owner expects the Construction Manager to recognize and coordinate with the Permitting Authority.

## **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 provide the following information to the Permitting Authority and obtain approval from the Permitting Authority prior to beginning construction:

- (a) Two (2) sets of documents, signed, sealed and dated by the Architect-Engineer, with all addenda enclosed with each set. These documents shall be sent to the Permitting Authority prior to sending the Permit Application address hereinafter.

#### **4.2 Code Inspections**

All projects require detailed code compliance inspections during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building safety. 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 request the appropriate inspector(s), no less than 48 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.

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

Palm Beach School Building Department inspections are scheduled at 687-7580 or 687-7153.

## ARTICLE 5

### SUBCONTRACTS

#### **5.1 Definition**

A Sub-Contractor 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 Sub-Contractor.

#### **5.2 Proposals**

Subject to Article 9 and, in accordance with Article 2.2.5, the Construction Manager shall request and receive proposals from Sub-Contractors and suppliers and will award those contracts to the qualified low bidder after he has reviewed each proposal and is satisfied that the Sub-Contractor is qualified to perform the work.

#### **5.3 Required Sub-Contractors' Qualifications and Subcontract Conditions**

##### **5.3.1 Subcontractual Relations:**

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

The Construction Manager shall make available to each proposed Sub-Contractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Sub-Contractor will be bound by this Article 5.3 and identify to the Sub-Contractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Sub-Contractor shall similarly make copies of such Documents available to his Sub-Contractors.

##### **5.3.2 Subcontract Requirements:**

(1) On subcontracts where the bid exceeds \$100,000.00, the Construction Manager may require Sub-Contractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Construction Manager wishes to award subcontracts to subcontractors unable to supply this bonding, he shall request special authorization by the owner to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.

1. Subcontract bidders must submit experience, bonding capability and financial condition. The Sub-Contractors experience, bonding capability and financial condition must demonstrate that adequate assets and equipment are available to properly perform the subcontract.
2. Workforce: The Sub-Contractor must agree to perform no less than 15% of the project construction work utilizing its own employees.
3. Sub-Contractor experience: The Sub-Contractor must have successfully completed no less than two projects of similar size and complexity within the last five years.



4. Supervision: The Sub-Contractor 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 Sub-Contractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the Sub-Contractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The Sub-Contractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.
5. All subcontracts shall provide:

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

That the Sub-Contractors 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 Sub-Contractors 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 Sub-Contractor 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 Sub-Contractor 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 Sub-Contractors, 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, 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 days for Substantial Completion, Final Completion and Owner Occupancy. 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. Liquidated Damages shall be assessed as specified in Article 8 of the General Conditions at a rate per day until substantial completion is achieved. The Notice To Proceed shall be issued within sixty (60) days from Board Approval of the Amendment to the Agreement to establish the GMP.

6.2 The date of Owner Occupancy shall occur as described in Article 2.3.16 herein above. Warranties 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 design documents are sufficiently complete to establish the scope of work for the project or any phase or 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 as described in the completed Exhibit B of the Request for Proposal Document, 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 7 of Section 00700, General Conditions. 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 costs of the project as defined under Article 9 of the Agreement, plus the Construction Managers 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. 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 shall be taken from the contingency with the Owner's permission, 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 of the Agreement.

**8.1.1 Pre-Construction Fee:** For the performance of the services set forth under Article 2 of the Agreement as required by the Owner and for profit and overhead related to these services, the Owner will pay the Construction Manager a total fee of **\$199,210**. The Pre-Construction Fee shall be paid based upon the completion of formal estimates at the phase of the project specified in Article 2.1.4 (a, b and c) of the Agreement and the Solicitation of Bids specified in Article 2.2.5 of the Agreement.

The Construction Manager's personnel to be assigned during the Pre-Construction Phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit C attached.

**8.1.2 Construction Phase Fee:** The Construction Manager shall commence the Construction Phase upon receipt of a Notice to Proceed from the Owner. The Construction Manager's compensation for work or services performed during the Construction Phase shall be described in the completed Exhibit D attached to the Request for Proposal Document. 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 equal monthly payments throughout the project based upon the duration of construction specified in the Notice to Proceed. The first monthly payment shall follow the issuance of the Notice to Proceed 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. The following are included in the Construction Managers fee for services during the Construction Phase:

- (a) Salaries or other compensation of the Construction Manager's employees at the job site. The Construction Manager's personnel to be assigned to the site during the Construction Phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit D. Salaries or other compensation of the Construction Manager's employees at his principal office and branch offices.

2. Adjustments in Fee: For changes in the project as provided in Article 7 of Section 00700, General Conditions, 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 or his Subcontractors.

3. Construction Managers 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.

### **8.1.3 Overhead and Profit for Construction Phase**

For services provided during and related to the construction phase and general expenses of any kind as may be expressly included in Article 9 of Section 00700, the percent (%) Overhead and Profit shall be based upon the total of the Total of Div. 1-16, Construction Phase Fee and General Conditions as specified in Exhibit B and shall be paid proportionally to the ratio of the cost of the work in place, excluding stored materials and less retainage (see Article 11.2 of this Agreement), as it bears on the latest estimate of the total construction cost or to the GMP or to the Owners 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. 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 is provided in Article 8.1.3.2 of this Agreement.

1. Costs and expenses included in the overhead and profit for the Construction Phase:

- (a) General operating expenses related to this project of the Construction Manager's principal and branch offices.
- (b) The costs of all data processing staff.
- (c) General operating expenses incurred in the management and supervision of the project except as expressly included in Article 9.
- (d) Those services set forth in Article 2.3.12 of this Agreement (Job Site Requirements).

2. The Construction Manager will not be due any additional Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed \$300,000.00. Should the GMP be increased by more than \$300,000.00 under the terms of Article 10 of this Agreement hereinafter due to no fault of the Construction Manager, the Construction Manager's additional Overhead and Profit for the Construction Phase of that portion of the accumulative increases in the GMP that exceed the GMP by more than \$300,000.00 will be the same percent as the Overhead and Profit established in 8.1.3 of this Agreement.

## ARTICLE 9

### GENERAL CONDITIONS

The Owner agrees to pay the Construction Manager for General Conditions 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 in Paragraphs 9.1.3 through 9.1.22 of this Agreement and the total payment for these items shall be the lump sum included on Exhibit B as the General Conditions (Direct Cost Items Related to Field Staff). Such payment shall be in addition to the Construction Phase Fee stipulated in Article 8, Paragraph 8.1.2 of this Agreement and shall be paid proportionally to the ratio of the cost of work in place as it bears on the latest estimate of the total construction cost or to the GMP or to the Owner's Construction Budget, whichever is less.

#### **9.1 Direct Cost Items**

- 1. Payments due to Sub-Contractors from the Construction Manager or made by the Construction Manager to Sub-Contractors for their work performed pursuant to contract under this Agreement in accordance with Article 11, Paragraphs 11.2 and 11.4 of this Agreement.
- 2. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof in accordance with Article 11, Paragraph 11.6 of this Agreement.
- 3. 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, plus a multiple approved by the Owner to cover labor burden.
- 4. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities including office facilities for Construction Manager and Owner' Representative and 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 which do not remain the property of the Construction Manager. For those items to be turned over to the Owner at the end of the project, Article 2.3.4 of this Agreement shall apply.

5. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a Sub- Contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.

6. Cost of the premiums for all insurance and cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the construction project. This includes any Sub-Contractor bonds the Construction Manager deems appropriate.

7. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.

8. The cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or his Sub-Contractors or suppliers.

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

9. Minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.

10. Job office supplies - includes postage, courier service, paper, pencils, paper clips, file folders, staples, coffee, water, etc., and janitorial supplies (photo copy or blue print paper not included).

11. Costs for trash and debris control and removal from the site.

12. Cost incurred due to an emergency affecting the safety of persons and property.

13. Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by Sub-Contractors and Vendors, subject to the following limitations:

(a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and

(b) The legal costs were not incurred as result of the Construction Manager's owner negligence or default.

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

14. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Managers fees as set forth in Article 8.

15. 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.

16. If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.

17. Transportation outside of Palm Beach 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 Section 112.061, Florida Statutes.

18. Costs of all reproductions required by the project to directly benefit the project.

19. Costs for watchman and security services for the project until final completion.

20. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.

21. The Construction Manager shall provide and maintain for the Owner a suitable temporary field office as described in Article 2, Paragraph 2.3.4 of this Agreement.

The office shall be provided with adequate air conditioning (heat and cooling), electrical lighting and bathroom. The expense of all utilities and telephone, including charges for local and long distance phone calls, shall be paid for by the Construction Manager. The telephone shall remain in service throughout the duration of the construction contract. A separate telephone line should be provided for the fax machine. The office shall be kept clean at all times with all cleaning and maintenance paid for by the Construction Manager.

22. Costs for any job site items not referenced herein, not normally provided by the Sub Contractors, which will be provided by the Construction Manager as required to complete the work.

## **ARTICLE 10**

### **DISCOUNTS AND PENALTIES**

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

## **ARTICLE 11**

### **PAYMENTS TO THE CONSTRUCTION MANAGER**

#### **11.1 Schedule of Values**

The preliminary schedule of values shall be submitted on AIA Document, G703, Certificate for Payment Continuation Sheet shall be submitted and approved prior to the initial request for payment. Each line item of the Work shall separately show the value of labor and materials in a ratio consistent with generally recognized estimating guides and supported by such data necessary to substantiate its accuracy, including the itemization of required bonds and insurance.

#### **11.2 Retainage**

Pursuant to Section 255.078, Florida Statutes, ten percent (10%) retainage will be withheld on the payment of the Construction Manager's Fees set forth in Article 8.1.3 of this Agreement and the Direct Cost Items described in Article 9, Paragraph 9.1 (items 1 and 2) of this Agreement. Retainage will not be withheld on services or fees set forth in Article 8, Paragraphs 8.1.1 and 8.1.2. of this Agreement or Direct Cost Items described in Article 9, Paragraph 9.1 (items 3-22) of this Agreement. When approved

by the Owner certain suppliers and Sub-Contractors may be paid the entire amount due when such payment is generally the practice of the industry. After fifty percent (50%) completion of the Cost of Work as specified on the GMP Summary (Exhibit B) together with all costs associated with existing change orders is satisfactorily completed, the Owner must reduce the amount of retainage withheld from each subsequent progress payment made to the Construction Manager from ten percent (10%) to five percent (5%). After fifty percent (50%) completion of the Costs of Work, the Construction Manager may present to the Owner a payment request for up to one-half of the retainage held by the Owner during the pre- 50% portion; and this payment will promptly be made unless there are grounds for withholding the payment under School Board Policy 7.23(3)(b).

### **11.3 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 of this Agreement, 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 of this Agreement. This data shall be attached to the Application and Certificate for Payment (AIA Document G702). Payments by the Owner to the Construction Manager shall be made as described in Article 8 of this Agreement.

### **11.4 Final Payment**

Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable as described in Article 8.1.2 of this Agreement after the Owner has accepted complete occupancy of the total project, provided that the Project be then finally completed, that the Construction Manager has verified by his signature that he has completed all items specified on the attached Exhibit H, and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager and the Architect-Engineer shall list those items prior to requesting final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed.

### **11.5 Payments to Sub-Contractors**

The Construction Manager shall within 10 days after receipt of payment from the Owner, pay all the amount due Sub-Contractors less the retainage of ten percent (10%) described in paragraph 11.2 of this Agreement until the project is substantially complete, and based on Construction Managers evaluation of the Sub-Contractors 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 estimated cost of completing any unfinished items likewise listed separately. Thereafter, the Construction Manager shall pay to the Sub-Contractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the Sub-Contractor 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 Owners operating and maintenance personnel is complete.

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

### **11.6 Delayed Payments by Owner**

If the Owner should fail to pay the Construction Manager within 30 days after the receipt of an approvable payment request from the Construction Manager, then the Construction Manager may,

upon thirty (30) additional days written notice to the Owner and the Architect-Engineer, stop the Project until payment of the Amount owing has been received.

### **11.7 Payments for Materials and Equipment**

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

### **11.8 Withholding Payments To Sub-Contractors**

The Construction Manager shall not withhold payments to Sub-Contractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owners, adjusting pay requests and project bookkeeping as required.

## **ARTICLE 12**

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

#### **12.1 Termination by the Construction Manager**

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

#### **12.2 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 Managers 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 Sub-Contractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after



giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to commence 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).

3. If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method 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).

### **12.3 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) of this Agreement, 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 Guaranteed Maximum Price, 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 commitments.

2. After the establishment of the Guaranteed Maximum Price or at the completion of the Design Phase, if the final cost estimates or lack of legislative 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 of this Agreement plus any costs incurred pursuant to Articles 9 and 10.

## **ARTICLE 13**

### **ASSIGNMENT AND GOVERNING LAW**

**13.1** 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.

13.2 This Agreement shall be governed by the Laws of the State of Florida, with venue in Palm Beach County.

## ARTICLE 14

### NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

14.1 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 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 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 and details of the cost implications.

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 this paragraph.

14.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owners written decision shall be final agency action unless the Construction Manager requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 60-4, F.A.C. within thirty (30) days of the Construction Manager's receipt of the Owners determination.

The venue for all civil and administrative actions against the department shall be in Palm Beach County, unless otherwise agreed by the parties.

14.3 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 14.1 of this Agreement, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Managers claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus 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 15

### PROTECTION OF PERSONS AND PROPERTY

#### **15.1 SAFETY PRECAUTIONS AND PROGRAMS**

**15.1.1** The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**15.1.2** In the event the Construction Manager encounters hazardous materials on the Site, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Construction Manager if, in fact, the material or removal has not been rendered harmless. The Work in the affected area shall be resumed when it has been rendered harmless, by written agreement of the Owner and Construction Manager.

**15.1.3** The Construction Manager shall not be required pursuant to Section 2.3 to perform without consent any Work relating to hazardous materials.

**15.1.4** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from performance of the Work in the affected area if in fact the material has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting there from, but not only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in the Subparagraph. The indemnification herein is subject to Florida Statute 768.28.

## **15.2 SAFETY OF PERSONS AND PROPERTY**

**15.2.1** The Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (a) Employees on the Work and all other persons who may be affected thereby;
- (b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Construction Manager or Construction Manager's Subcontractors or Sub-subcontractors;
- (c) Other property at the Site and adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;

**15.2.2** All alcoholic beverages, smoking and drugs shall be prohibited from the Project site.

**15.2.3** All workers on the Project site shall wear appropriate and uniform-like attire and shall have visible identification as being employees of the Construction Manager or Subcontractor. (for example, all employees wear same color shirts).

**15.2.4** The Construction Manager shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property their protection from damage, injury or loss in accordance with CFR/29 Code of Federal Register, Part 1926.

**15.2.5** The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent sites and utilities.

**15.2.6** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under the supervision of properly qualified personnel.

**15.2.7** The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 15.2.1.(b) and (c) of this agreement caused in whole or in part by the Construction Manager, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them or by anyone by whose acts either of them may be liable and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to any other obligations of the Construction Manager including Section 00700.

**15.2.8** The Construction Manager shall designate a responsible member of the Construction Manager's organization at the Site whose duty shall be prevention of accidents. This person shall be the Construction Manager's Superintendent unless otherwise designated by the Construction Manager in writing to the Owner and Architect.

**15.2.9** The Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger the site safety.

**15.2.10** The Construction Manager shall promptly report to the Architect and Owner in writing and by telephone all accidents arising out of or in connection with the Work that cause death, serious personal injury or major property damage. In addition, the Construction Manager shall be required to notify the Owner of all recordable accidents.

## **ARTICLE 16**

### **MISCELLANEOUS**

#### **16.1 Interest**

Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 215.422(3)(b), Florida Statutes (2000).

#### **16.2 Harmony**

Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Sub-Contractors for work on the project shall work in harmony with and be compatible with all other labor being used by building and construction Managers now or hereafter on the site of the project.

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

#### **16.3 Apprentices**

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

#### **16.4 Invoices Submitted Under Article 9**

Invoices submitted under Article 9 of this Agreement 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.

#### **16.5 Construction Manager's Project Records**

The Construction Managers 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.

#### **16.6 Minority Participation**

The Construction Manager shall diligently attempt to award at least fifteen percent (15 %) of his material contracts and subcontracts to firms having a letter of certification as a minority business.

#### **16.7 Construction Manager's Payment Rights**

Construction Managers providing goods and services to the Owner should be aware of the following time frames. Upon receipt of an approvable invoice the Owner has thirty (30) days to inspect, approve and make payment for the goods and services.

#### **16.8 Public Entity Crime Information Statement**

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, Sub-Contractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

#### **16.9 Unauthorized Aliens**

The School District shall consider the employment by any Construction Manager of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract.

#### **16.10 Possession of Firearms**

Possession of firearms will not be tolerated on School District property.

"Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive device; or any machine gun.

No person who has a firearm in their vehicle may park their vehicle on School District property. Furthermore, no person may possess or bring a firearm on School District property.

If any employee of an independent contractor or sub-contractor is found to have brought a firearm on School District property, said employee will be terminated from the School Board project by the independent contractor or sub-contractor. If the sub-contractor fails to terminate said employee, the sub-contractor's agreement with the independent contractor for the School Board project shall be terminated. If the independent contractor fails to terminate said employee or fails to terminate the agreement with the sub-contractor who fails to terminate said employee, the independent contractor's agreement with the School Board shall be terminated.

### **16.11 Criminal Acts**

Employment by any Construction Manager of any employees or Trade Contractors hired by the Construction Manager with multiple felonies and / or crimes against children will not be tolerated. The Construction Manager must provide documented proof of efforts to comply with this requirement. The Owner may declare any non-compliance or lack of diligent effort by the Construction Manager to comply as a breach of contract and immediately terminate the services of the Construction Manager.

### **16.12 Background Checks**

All individuals who are permitted access on school grounds when students are present, individuals who will have direct contacts with children or any student of the School District, or who will have access to or control of school funds must be fingerprinted and background checked. Vendor agrees to have all such personnel undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all individuals in the organization who meet any of the conditions to submit to a background check, including fingerprinting by the School District's Police Department at the sole cost of Vendor. If Vendor can demonstrate to the Purchasing Department that it is not practical to have fingerprinting done by the School District's Police Department, Vendor will be permitted to have the fingerprints and clearance done by another appropriate agency with the report of the results to be immediately transmitted to the School District's Police Department which shall be the sole determiner of clearance. Vendor shall not begin providing services contemplated by this Agreement until Vendor receives notice of clearance by the School District. The School Board, nor its members, officers, or agents shall not be liable under any legal theory for any kind of claim whatsoever for the rejection of Vendor (or discontinuation of Vendor's services) on the basis of compliance obligations. Vendor agrees that neither the Vendor, nor any employee, agent nor representative of the Vendor who has been convicted or who is currently under investigation for a crime delineated in Florida Statute 435.04 will be employed in the performance of this contract.

### **16.13 Contract Disclosure**

Upon written request by the School District, and upon the filing of a complaint against the Construction Manager pursuant to Palm Beach County School Board Policy 6.144, the Construction Manager agrees to provide the School District, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Construction Manager has used in the past five years on any and all of its contracts that were undertaken within the Palm Beach County School District relevant geographic market as defined in Board Policy 6.143, including the total dollar amount paid by the Construction Manager for each subcontract. The Construction Manager agrees to fully cooperate in any investigation conducted by the School District pursuant to this Policy. The Construction Manager understands and agrees that violation of this clause is a material breach of the contract and may result in contract termination, debarment, and other sanctions.

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

Project Name: WEST BOYNTON AREA ES (03-Z)

Project Number: 0281-8243

CONSTRUCTION MANAGER:  
W.G. MILLS, INC.

Company

By: [Signature]  
Title: Exec Vice President  
Date: 10-3-06

Attest: [Signature]  
Title: Secretary  
Date: 10-3-06

THE SCHOOL DISTRICT OF  
PALM BEACH COUNTY, FLORIDA

[Signature]  
Superintendent  
Date: 10/18/06

[Signature]  
Vice Chairperson  
Date: 10/18/06

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

[Signature]  
School District Attorney  
Date: 9-26-06

(CORPORATE SEAL)

(SEAL)