

**SCHOOL BOARD OF MANATEE COUNTY
DEPARTMENT OF CONSTRUCTION SERVICES**

AGREEMENT BETWEEN OWNER & CONSTRUCTION MANAGER

MCSB PROJECT NO: SBMC # 07-3888

PROJECT NAME AND LOCATION: Manatee High School – Davis Building Remodeling & Renovation
902 33rd Street Court West
Bradenton, Florida 34205

PROJECT DESCRIPTION: The scope of work required for the Manatee High School – Davis Building Remodeling and Renovation shall be established after completion of an investigative report. This agreement authorizes pre-construction services, investigative services and investigative cost estimates for this project. Exhibits A through F, further defining the scope of work, is attached hereto and incorporated herein by reference.

TOTAL PROJECT BUDGET: The Total Project Budget is \$10,000,000.00 and is comprised of the following:

1.	Design Services: -	\$ 700,000.00
2.	Construction Services: -	\$ 8,100,000.00
3.	Owner Services: -	<u>\$ 1,200,000.00</u>
	Total Project Budget: -	\$10,000,000.00

SUBSTANTIAL COMPLETION: To be Determined

FINAL COMPLETION: To Be Determined

ARCHITECT-ENGINEER: Long and Associates Engineers/Architects, Inc.
4525 S Manhattan Avenue
Tampa, Florida 33611
Office: 813-839-0506
Fax: 813-839-4616

CONTRACTOR: Creative Contractors, Inc.
620 Drew Street
Clearwater, FL 33755
Office: 727-461-5522
Fax: 727-447-4808

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT,

Made this ____ day of _____ in the year 2007 by and between the SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, hereinafter referred to as the Owner, and Creative Contractors Inc.; 620 Drew Street; Clearwater, FL 33755, hereinafter referred to as the Construction Manager or CM.

FEDERAL TAX I.D. NUMBER: 59-1561132

The Owner and the Contractor agree as set forth below:

ARTICLE 1

THE CONSTRUCTION TEAM AND THE EXTENT OF THE AGREEMENT

- 1.1 The Contractor agrees to furnish its professional skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Contractor agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the project in an expeditious and economical manner consistent with the interests of the Owner.
- 1.2 The Construction Team
 - 1.2.1 The Contractor, the Owner, and the Architect-Engineer shall work as a team throughout the entire Construction Management at Risk delivery process.
 - 1.2.1.1 The Contractor shall provide leadership to the Construction Team on all matters relating to construction.
 - 1.2.1.2 The A-E shall provide leadership to the Construction Team on all matters relating to design.
- 1.3 Extent of Agreement
 - 1.3.1 This Agreement is complementary to the drawings, specifications, conditions of the contract, audio-video recording of oral presentations and interviews, and, together with them, represents the entire agreement between the Owner and the Contractor and supercedes all prior negotiation, representations or agreements.
 - 1.3.2 Where this Agreement is in conflict with the conditions of the contract, this Agreement will prevail. Where this Agreement is silent, the conditions of the contract, the requirements of the drawings and specifications will prevail.
 - 1.3.3 This Agreement may be amended by written instrument signed by the Owner and the Contractor.
- 1.4 Definitions:
 - 1.4.1 Project – The total work to be performed under this Agreement. The project consists of planning, design, construction and associated site work to build the components of the projects.
 - 1.4.2 Owner – The School Board of Manatee County, Florida as represented by the Department of Construction Services and its Project Director.
 - 1.4.3 Project Director – Person designated by the Director of Construction Services to provide direct interface with the A-E in respect to the Owner’s interest and responsibilities.
 - 1.4.4 Contractor, Construction Manager or CM – Creative Contractors Inc., 620 Drew Street; Clearwater, FL 33755
 - 1.4.4.1 The terms Contractor, Construction Manager and CM are used interchangeably.

1.4.5 Architect-Engineer, or A-E – Long & Associates Engineers/Architects, Inc., 4525 S. Manhattan Ave.; Tampa, FL 33611.

1.4.6 Owner’s Construction Services Budget – Owner’s funds budgeted, requested and available for the construction of the project. The Owner’s Construction Services Budget is \$8,100,000.00 for the project, including all contractor’s management fees and cost of the work as further identified below:

Construction	\$	TBD
General Conditions	\$	TBD
Overhead & Profit	\$	TBD
Pre-Construction	\$	47,619.00
Unforeseen Conditions	\$	TBD
Bond	\$	TBD
Total		\$8,100,000.00 (Construction Services Budget)

1.4.7 Total Project Budget - The total cost of the project, including design services, construction services, Owner services and all fees and other costs necessary to design, develop and construct each project, is \$10,000,000.00.

ARTICLE 2

CONSTRUCTION MANAGERS BASIC SERVICES

2.1 The Construction Manager agrees to provide Construction Management services while operating within a modified Construction Management at Risk delivery process for the projects as hereinafter set forth.

2.2 The modified Construction Management at Risk delivery process.

2.2.1 Stage I – District Project Planning

2.2.1.1 By entering into this contract, the CM agrees to the project description, budget, the substantial completion and schedule for each project as set forth herein. The CM further agrees that the projects are needed, the sites are appropriate and that the budgets are adequate. The CM agrees that the Owner shall define the level of quality of the projects.

2.2.2 Stage II – Project Budget Endorsement

2.2.2.1 The first ranked Architect-Engineer and Construction Manager shall:

- (1) Review the district’s project scope of time, quality and money.
- (2) Provide a Letter of Commitment and oral School Board presentation publicly, if requested, endorsing the project scope, budget, time and quality as adequate and appropriate.

2.2.3 Stage III – Project Design and Development

2.2.3.1 Consists of three primary phases each progressively developing the project design and construction documents with School Board approval.

- (1) Phase I – Schematic Design
- (2) Phase II – Design and Development
- (3) Phase III – Construction Documents

2.2.3.2 The A-E and Construction Manager shall, at the completion of Stage III: Phase I – Schematic Design:

- (1) Provide a second Letter of Commitment and oral School Board presentation publicly, if requested, stating that the schematic design is in conformance with the project Scope of Work and that the district’s:
 - (a) Time schedules continue to be appropriate.
 - (b) Level of quality is being achieved.
 - (c) Allotted money is adequate
- (2) Or, have its services terminated in accordance with Article 10. If the contract is terminated Phase I documents become the property of the Owner solely for the purpose of completing the project.

Such documents may be used or changed by the Owner for the purpose of completing the project. The A-E shall retain the right to use the documents in any manner that does not hamper completion of the project.

2.2.3.3 The Construction Manager shall, at the completion of Stage III: Phase II – Design and Development:

- (1) Provide a third Letter of Commitment and oral School Board presentation publicly stating that with professional assistance and appropriate use of value engineering, the Design and Development documents are in conformance with the project scope and that the District's:
 - (a) Time schedules continue to be appropriate.
 - (b) Level of quality is being achieved.
 - (c) Allotted money is adequate.
- (2) Or, provide evidence prohibiting the commitment

2.2.3.4 The Construction Manager, shall at 100% completion of Stage III: Phase III – Construction Documents:

- (1) Provide a detailed Guaranteed Maximum Price (GMP) less than or equal to the budgeted cost of construction services.
- (2) Mobilize construction personnel and proceed with Stage IV – Project Construction.

2.2.3.5 Or, the Construction Manager shall, at 100% completion of Stage III: Phase III – Construction Documents:

- (1) Provide a detailed Guaranteed Maximum Price (GMP) greater than the budgeted cost of construction services.
- (2) The School Board and Administration shall grant the Construction Manager thirty (30) calendar days to return with a Guaranteed Maximum Price (GMP) less than or equal to the budgeted cost of construction services.

2.2.3.6 If the Construction Manager returns after thirty (30) calendar days, with a Guaranteed Maximum Price (GMP) that exceeds the budgeted construction cost:

- (1) The School Board, at the Superintendent's recommendation, can modify the construction services budget, thereby increasing the total project budget without additional cost to the Owner for Architectural and Engineering fees.
- (2) Or, at the Superintendent's recommendation, terminate the Construction Manager's services allowing the next ranked firm to provide a Guaranteed Maximum Price (GMP) within budget and begin construction.

2.2.4 Stage IV – Project Construction and Warranty

2.2.4.1 The Project is constructed:

- (1) In strict accordance with Stage III: Phase III Construction Documents as recommended by the Superintendent and approved by the School Board.
- (2) Standard Warranties, as identified in the project documents, are in effect and strictly enforced.

2.3 Basic professional services to be provided:

2.3.1 The Contractor and the A-E shall jointly schedule regular meetings with the Owner regarding site use and improvements and selection of materials and building systems. Contractor to provide recommendations on construction feasibility, actions to minimize adverse effects of labor or material shortages, time requirements for procurement, installation and construction completion.

2.3.2 Provide for the A-E's and the Owner's review and acceptance, a project schedule that coordinates the Contractor's services, the A-E services and the Owner's responsibilities with anticipated construction schedules. During the design process, a preliminary project schedule shall be developed and updated to indicate proposed activities, dependencies, duration's, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price (GMP) proposal, preparation and processing of shop drawings, samples and delivery of materials or equipment requiring long-lead time procurement. If preliminary project dates previously approved are found to be inaccurate, the Contractor will make appropriate recommendations to the Project Director and A-E.

2.3.3 Prepare for Owner's review and eventual approval a detailed estimate of construction cost, which shows the various elements of the project. Update periodically as the A-E prepares construction documents. Advise the Owner and A-

E if construction costs are exceeding the Construction Services Budget and make recommendations for corrective action.

2.3.3.1 Estimates Required:

- (1) Schematics – More detail with supporting data
- (2) Design/Development – Systems selected
- (3) 50% Drawings – Only Final details missing – Preliminary GMP
- (4) 100% Drawings and Specifications – Final GMP proposal

2.3.3.2 The estimates outlined in 2.3.3.1 shall be reviewed with the Project Director and A-E. If any estimate exceeds previously approved estimates or the Owner's Construction Services budget, the Contractor shall make appropriate recommendations to the Owner and the A-E.

2.3.4 The Contractor shall seek to develop subcontractor interest in the project and shall furnish to the Owner and A-E a list of possible subcontractors and suppliers or trade contacts that may furnish material or equipment for each principal portion of the work. The Owner and the Architect will reply in writing to the Contractor if the A-E or Owner knows of any objections to a subcontractor or supplier.

2.3.5 Advertising, Bidding and Awarding of Contracts shall be completed per State Requirements for Educational Facilities (SREF) in Section 4.1(6).

2.3.6 The Contractor does not warrant or guarantee estimates or schedules except as included in the GMP. Any recommendations and advice of the Contractor concerning design alternatives or value engineering shall be subject to the approval of the Project Director and the A-E.

2.3.7 It is not the Contractor's responsibility to ascertain that drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes or other regulations. However, if the Contractor recognizes a non-compliant issue, the Contractor shall immediately notify the Project Director and the A-E in writing.

2.3.8 During construction, the Contractor shall schedule and conduct regular meetings of the construction team and prepare and distribute minutes.

2.3.9 Equal Employment Opportunity (EEO) - The Contractor shall comply with all applicable laws, regulations and special requirements of the contract documents affording equal employment opportunity and affirmative action programs.

2.3.10 Guaranteed Maximum Price (GMP)

2.3.10.1 When the Owner determines that the drawings and specifications are 100% complete; the Contractor shall provide a GMP.

2.3.10.2 The GMP shall include the Contractor's Overhead and Profit and represent the sum total of all costs associated with completing the work.

2.3.10.3 If the Owner determines the drawings and specifications are not 100% complete and a GMP is required to maintain the Owner's schedule, the Contractor shall provide line item within the GMP for further development of drawings and specifications by the Architect. Further development does not include changes in scope, systems, materials or equipment.

2.3.10.4 The Contractor's GMP proposal shall include a written statement thoroughly explaining the foundation in which the GMP is based. This statement shall include but not necessarily be limited to the following information:.

- (1) A complete list of all drawings and specifications used to prepare the GMP.
- (2) All addenda and changes in conditions of the Agreement used to prepare the GMP.
- (3) A complete list of Owner provided allowances and a statement explaining the CM's understanding of their use.
- (4) The proposed date of a School Board approved Substantial Completion.

- 2.3.10.5 The Contractor shall meet with the Project Director and A-E to review the contents of GMP proposal. All discrepancies shall be promptly delivered to the Contractor in writing. The Contractor shall make the appropriate adjustments to the GMP proposal.
- 2.3.10.6 The Contractor shall not incur any reimbursable construction cost, as outlined in Article 6 and Article 15, prior to the Owner's acceptance of the Contractor's GMP proposal and issuance of a Notice to Proceed.
- 2.3.10.7 Upon acceptance of the GMP proposal by the Owner, the GMP will become a Change in Condition to this Agreement and thereby, establish this Agreement's GMP, contract time, and liquidated damages for incorporated phases of work. Performance and payment bonds on AIA A311CM forms, will be executed with the Change in Condition to this Agreement incorporating the GMP.
- 2.3.10.8 The GMP shall include only those taxes enacted at the time the GMP is established.
- 2.3.10.9 If the GMP exceeds the Owner's Construction Services Budget, the terms of this Agreement provided by Section 2.2.3.5 (2) and Section 2.2.3.6 shall apply.
- 2.3.11 The construction phase shall commence on the earlier of the following:
The Owner's acceptance of the Contractor's GMP proposal and issuance of the Notice to Proceed, or
- (1) The Owner's first authorization to the Contractor to:
 - (A) Award a Subcontract
 - (B) Undertake construction work with Contractor's forces
 - (C) Issue a Purchase Order for materials or equipment required for the work
- 2.3.12 The Contractor shall develop procedures that are acceptable to the Project Director and A-E for pre-qualification of trade contractors and material suppliers. Develop trade contractor interest in the project and conduct pre-bid conferences with interested bidders to review the Project Team approved bid package documents and project schedule. The Contractor shall obtain bids from subcontractors and open such bids in the presence of the construction team, specifically the Project Director and A-E. The Project Team will then analyze the bids and deliver such bids to the Project Director and Architect. The Project Director will then determine, with the advice of the Contractor and subject to the reasonable objection of the Architect, which bids will be accepted and indicate his or her acceptance by signing the bid tabulation form for each work scope. The Contractor shall not be required to contract with anyone whom the Contractor has a reasonable objection.
- 2.3.13 Unless authorized by the Owner, all work shall be performed under trade contracts held by the Contractor. The Contractor shall not bid any of the trade contractor work or perform such work with his own forces without prior written consent of the Project Director.
- 2.3.14 The Contractor shall prepare and submit a master project schedule, acceptable to the Project Director, indicating all relevant activities during Stage II, III and IV of delivery process. This schedule will serve as the framework for the development of all detailed schedules. The master schedule shall be produced and updated monthly throughout the project.
- 2.3.15 Within thirty calendar (30) days after the receipt of the Owner's Notice to Proceed, the Contractor shall prepare a construction schedule and submit the schedule to the A/E and Project Director. The schedule shall graphically depict the sequence and duration of all activities required to satisfactorily finish the project.
- 2.3.16 Manage, schedule and coordinate the work, including the work of trade contractors, and coordinate the work with the activities and responsibilities of the Project Director, A/E and Contractor in order to complete the project in accordance with the Owner's objectives of time, quality and cost. Maintain exclusively for this project a competent full-time staff at the project site to coordinate and direct the work. The Contractor's on-site management and supervisory personnel shall be consistent with the interview presentation and shall not be removed or replaced without the Project Director's consent. The Project Director shall have the right to direct the Contractor to remove any on-site personnel whose performance is unsatisfactory to the Owner. In such event, the Contractor shall promptly replace such personnel without additional compensation for that replacement.
- 2.3.17 The Contractor shall provide a monthly accounting narrative describing the current cost and payment status of the entire project. This report shall indicate all current encumbrances and expenditures to the GMP budget.

- 2.3.18 The Contractor shall provide a daily job log containing a record of weather, Contractor employees on site, subcontractors on site with number of workers and work accomplished. The log shall be maintained at the jobsite and available to the A-E and the Project Director at all times.
- 2.3.19 The Contractor shall maintain a log of Request for Information's (RFI's) and Change in Conditions (CIC's) to be reviewed at each meeting of the Construction Team who shall act on the disposition of these items.
- 2.3.20 Establish on-site organization and lines of authority to implement the overall plans of the Construction Team.
- 2.3.21 Contractor shall be responsible for initiating, maintaining and supervising effective safety programs and requiring similar programs of trade contractors and subcontractors. OSHA guidelines shall serve as the basis for the safety program. Copies of the proposed program shall be distributed to the Construction Team.
- 2.3.22 Hazardous Materials – In the event hazardous materials such as asbestos or PCB's are encountered at the project site and it was not specifically noted on drawings or job specifications, the Contractor shall immediately notify the Owner and the A/E in writing of the suspected substance. The Owner shall be responsible for obtaining the services of a licensed laboratory to determine absence or presence of the substance and whether it has been rendered harmless. If the material is found to be hazardous, the Owner will be responsible for the cost and time to render the substance harmless. The Owner shall indemnify and hold Contractor harmless from and against claims, damages, losses and expenses arising out of or related to any hazardous materials at the site. This indemnity shall not apply to hazardous materials brought to the site by Contractor or its subcontractors. The Owner agrees that this Contract includes \$100.00 paid by Contractor as specific consideration for this indemnity.
- 2.3.23 The Contractor shall provide for all job-site facilities necessary to enable the Contractor, the Project Director, Project Representative and the A-E to perform their respective duties in the management, inspection and supervision of construction.

ARTICLE 3

OWNER'S RESPONSIBILITIES

- 3.1 The Owner shall provide full information, in a timely manner, regarding the requirements of the project, including a program setting forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.
 - 3.1.1 The Owner shall establish a Project Budget that includes the cost of all Design, Construction and Owner Services. The Project Budget shall include contingencies for changes in the work conditions and other costs, which are the responsibility of the Owner.
 - 3.1.2 The Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Contractor shall be entitled to rely on this information:
 - 3.1.2.1 Reports, surveys, drawings and tests concerning the conditions of the site, which are required by, law.
 - 3.1.2.2 Surveys describing physical characteristics, legal limitations and utility locations for the project site.
 - 3.1.2.3 The services of geotechnical engineers when such services are required for site evaluation.
 - 3.2 The Department of Construction Services will designate a Project Director and Project Representative that will be fully acquainted with the Project and shall define the lines of Owner authority to approve construction budgets and changes in the project within the Owner approved Scope of Work and Project Budget.
 - 3.3 The Owner shall retain an Architect-Engineer for design and to prepare construction documents for the project. The duties and responsibilities of A-E are described in the Agreement Between the Owner and the Architect-Engineer. A copy will be furnished to the Contractor upon reasonable request. The Agreement between the Owner and Architect shall not be modified without written notification to the Contractor.

- 3.4 The Owner will furnish the Contractor a reproducible set of 100% complete construction documents and \$10,000 worth of construction document printing expense for use by the Contractor in developing a GMP and constructing the project (if required).

ARTICLE 4

PERMITTING AND INSPECTIONS

- 4.1 A reviewing authority must approve the construction documents for code compliance prior to beginning work. In addition, all changes to the construction documents shall be reviewed and approved by the same authority. During Stage IV, Project Construction and Warranty, all work in place will be inspected for strict compliance with applicable codes, the construction documents and generally accepted construction techniques by the Owner's Project Representative or his designee and other code inspection authorities having jurisdiction.
- 4.2 Code Inspections – All components of the project require detailed code compliance and construction document inspections during construction. These areas normally include, but are not limited to, structural, mechanical, electrical, plumbing and general building.
- 4.3 The Owner or another inspecting authority identified by the Owner will provide inspection personnel. The Owner's Project Director will provide to the Contractor names, addresses and telephone numbers of the inspecting authorities. The Contractor shall notify the appropriate inspector(s) no less than 24 hours in advance of the required inspection. All work scheduled for inspection shall be ready for inspection and inspected prior to the work being concealed. Work not inspected and not approved prior to concealment shall be revealed for inspection when directed by the Owner of designated inspecting authority. All costs associated with inspecting prematurely concealed work shall be borne by the Contractor.

ARTICLE 5

SUBCONTRACTS

- 5.1 Subcontracts:
- 5.2 Definition – A subcontractor is a person or organization who has a direct contract with the Contractor to perform specific work at the jobsite. Nothing in the contract document shall create any contractual relationship between the Owner, A-E or any other subcontractor.
- 5.3 Relationships – By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by the terms of the contract documents, and to assume toward the Contractor all obligations and responsibilities which the Contractor by these documents, assumes to the Owner and the A/E. The contractor shall provide the Owner copies of the subcontractor bonds or evidence that bonds have been acquired. All increases and decreases to project shall be documented in the bond. CM requested payments for work completed will be withheld until all documentation of bonds is received.
- 5.4 Requirements:
- (1) On all subcontracts exceeding \$100,000 the Contractor may require subcontractors 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 Contractor wishes to award subcontracts to Contractors unable to supply this bonding, he may request special authorization to do so from the Owner.
 - (2) The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years unless waived by Owner, A/E and CM. Similar projects completed by the subcontractor will be indicated on the scope of work sheet by the CM.
 - (3) All Subcontracts shall provide:
 - (a) Limitation of Remedy – No damages for delay. The subcontractors exclusive remedy for delay in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or the A/E or attributable to the Owner or A/E and including claims based on breach of contract or negligence, shall be an extension of contract time.

- (b) In the event of a change in the work, the subcontractors claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead, profit and bond costs for additional work and 10% for deducts. A detailed breakdown, with necessary backup, shall be provided.
 - (d) The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies or claims for increase in the contract price, damages, losses or additional compensation.
- (4) Subcontractor is required to be licensed per Chapter 489 and shall provide licensing prior to start of work.

ARTICLE 6

PAYMENT TO THE CONTRACTOR

6.1 **Payment to the Contractor:**

In consideration of the performance of the contract the Owner will pay the Contractor for the following listed items, which shall all be considered as reimbursables for the project. The Contractor shall prepare a complete listing of these items with appropriate pricing and the agreed upon total of these items shall become a “Not to Exceed” price for the project. These items will be billed monthly and will require back up acceptable to the Owner. The following list is a guide only and is not warranted to be complete. The Contractor may need to add items, or some items may not be required for the project.

- 6.1.1 Listing of Reimbursable Items – Wages or salaries of the Contractor’s supervisory or administrative personnel when stationed at the jobsite including all taxes, insurance and benefits. Wages of construction workers directly employed by the Contractor at the site to perform work including all taxes, insurance and benefits.

- Quality Control
- Site Engineering – layout and grades
- Testing – other than required by specifications
- Security service
- Janitorial service
- Scheduling and CPM
- Drawings and printing – in excess of Owner’s \$10,000
- Data processing
- Field office
- Office supplies and equipment
- Telephones – consider use of State Suncom System
- Site Communications
- Office supplies – Owner and A/E
- Miscellaneous permits and fees
- Photos
- Postage and telegrams
- Auto expense
- Living expense – if applicable, prior approval required
- Housing – if applicable, prior approval required
- Project signs
- Special clothing and protective equipment
- Storage areas
- Material handling
- Temporary fencing
- Temporary roads and walks
- Travel – outside of Manatee County, prior approval required
- Temporary barricades
- Temporary stairs and landings
- Temporary partitions
- Temporary toilets
- Temporary sanitary lines
- Temporary power, lights, and energy cost-prior to substantial completion
- Temporary office

Bottled drinking water
Safety requirements
Temporary water service-prior to substantial completion
Fire protection
Dewatering and drainage
Clean up
Final clean up
Punch list
Dumpsters
Small tools
Equipment maintenance and repair
Fuel, oil and grease
Trucking – for Contractor use
Costs of administration direct material purchase program
Total “Not to Exceed” cost of reimbursables to be determined.

- 6.2 Overhead and Profit – The Owner shall pay the Contractor for overhead, profit and general expenses of any kind, except as maybe expressly included in Article 6.1, for services provided during and related to the construction of the project. The fee shall be determined and shall be paid proportionally to the cost of work in place, excluding stored materials and less retainage, 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.
- 6.3 The Owner agrees to pay the Contractor for the cost of work as herein defined:
- 6.3.1 Reimbursables per Article 6.1.1.
- 6.3.2 Overhead and Profit per Article 6.2
- 6.3.3 Cost of all materials, supplies and equipment incorporated in the work or stored on site, including transportation and storage thereof. At the Owner’s discretion, the Owner will make payments for materials, supplies or equipment stored off-site and bonded.
- 6.3.4 Payments made by the Contractor to trade contractors for their work performed in accordance with contracts with the Contractor.
- 6.3.5 Sales, use, gross receipt, or similar taxes related to the work imposed by any governmental authority for which the Contractor is liable.

ARTICLE 7

UNFORESEEN CONDITIONS FUND

- 7.1 Unforeseen Conditions Fund
- 7.1.1 The unforeseen condition fund within the GMP shall be used at the discretion of the Construction Team and will be reduced as the project is bought. The fund money will be spent for changes due to unforeseen conditions only. The contractor shall maintain a current listing of the unforeseen conditions transactions and it shall be available to the Construction Team at all times. The unforeseen conditions fund shall be reduced in proportion to the percentage of work completed, with a minimum of 3% and a maximum of 5% of the GMP in the budget at all times.

ARTICLE 8

CHANGES IN THE PROJECT

- 8.1 Changes in the Project
- 8.2 Change Orders – The Owner, without invalidating this agreement, may order changes in the project within the general scope of This Agreement consisting of additions, deletions or other revisions. The GMP and the

construction completion date will be adjusted accordingly. All changes in the project not covered by an authorized contingency shall be authorized by change order and signed by the Owner before the change is implemented.

- 8.3 A change order is a written order to the Contractor signed by the Owner issued after the execution of This Agreement, authorizing a change in the project, Contractor's fee, or the construction completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the cost of the project.
- 8.4 The increase or decrease in the GMP resulting from a change in the conditions shall be determined in one or more of the following ways, and shall be submitted with a complete breakdown of materials, labor and fees:
- (1) By mutual acceptance of a lump sum properly itemized and supported by sufficient data to permit evaluation by the A/E and Project Director.
 - (2) By unit prices stated in the agreement or subsequently agreed upon.
 - (3) By costs defined in Article 6 and a mutually acceptable fixed or percentage fee.
 - (4) By the method in Article 8.4.1.
- 8.4.1 If the above methods in (1), (2), or (3) are not agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a change order is issued under these conditions, the A/E will establish an estimated cost of the work and the Contractor shall not perform any work whose cost exceeds that estimate without prior written approval of the Owner. The Contractor shall keep and present, in such format as may be prescribed, an itemized accounting with appropriate supporting data of the increase in the cost of the project defined in Article 6.
- 8.4.2 Claims for Additional Cost or Time – All claims for additional cost or time shall be made by a request for change order. Only delays which are determined to extend the critical path in the schedule for constructing the project will result in a time extension.
- 8.4.3 Minor Changes – The A/E will have authority to order minor changes in the project not involving an adjustment to the GMP or any extension of the construction completion date and not inconsistent with the intent of the drawings and specifications. Such changes shall be effected by written order. Documentation of the changes shall be determined by the construction team.

ARTICLE 9

DISCOUNTS AND PENALTIES

- 9.1 Discounts and Penalties – 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 Contractor. To the extent the cost of the project is paid with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds and all returns from sale of surplus material and equipment shall be credited to the cost of the project. All penalties incurred due to the fault of the Contractor for late payment of the cost of the project, except, late payments by Owner, will be paid by the Contractor.

ARTICLE 10

LIQUIDATED DAMAGES

- 10.1 Liquidated Damages
- 10.2 It is hereby understood and mutually agreed, by and between Contractor and Owner, that the Contract time for completion of the work indicated in the contract documents is a reasonable time period in which to complete the work and achieve a state of substantial and final completion for the Project. By executing this Contract, the Contractor is acknowledging his agreement with the reasonableness of the time period provided for substantial and final completion.
- 10.3 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time or as otherwise required by the Contract Documents, the Owner shall be entitled to retain or recover from the Contractor and/or its Surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual date of Substantial Completion. Such

liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner would incur as a result of delayed completion of Work.

		Base Bid	Liquidated Damages Per Day
\$	1,000	to \$20,000	\$ 100
	20,001	to 75,000	200
	75,001	to 150,000	500
	150,001	to 350,000	750
	350,001	to 750,000	800
	750,001	to 1,000,000	1,000
	1,000,001	to 2,000,000	1,200
	2,000,001	to 3,000,000	1,500
	3,000,001	to 4,000,000	1,600
	4,000,001	to 5,000,000	1,700
	5,000,001	to 6,000,000	1,800
	6,000,001	to 7,000,000	1,900
	7,000,001	to 8,000,000	2,000
	8,000,001	to 9,000,000	2,100
	9,000,001	to 10,000,000	2,200
	10,000,001	to 11,000,000	2,300
	11,000,001	to 12,000,000	2,400
	12,000,001	and over	2,500

- 10.4 The Liquidated Damages amount per calendar day are fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and difficulty of ascertaining actual damages the Owner will sustain. The Owner will suffer financial damage if the Project is not substantially completed on the dates set forth in the Contract Documents. Therefore, it is agreed that the liquidated damages amount per calendar day is adequate to cover damages, which the Owner will sustain by reason of inconvenience, loss of use, loss of monies, additional costs of contract administration by the Architect and Owner.
- 10.5 Permitting the Contractor to continue to finish the work or any part of the work after time fixed for its completion or after date to which time for completion may have been extended shall in no way constitute a waiver on the part of the Owner of any of his rights under the Contract.
- 10.6 Liquidated Damages shall be assigned to the Contractor if punch list items have not been completed within ninety (90) days after Substantial Completion. The value of punch list items shall be determined by the Architect and Engineer and multiplied by two (2). This total value (actual value times two) shall be withheld until the item has been completed. In addition, the Owner may obtain the services of others to complete unfinished punch list items after ninety (90) days have expired. Costs for the work shall be deducted from the Contractor's final payment. Liquidated Damages for punch list items shall commence on the ninety-first (91st) day after Substantial Completion and accrue until the final Application for Payment has been approved by the Architect. The Contractor, and its Surety, shall pay to the Owner any sums hereinafter stipulated as fixed, agreed and liquidated damages for each calendar day of delay until the punch list items are complete.

		200% of Estimated Cost To Complete Punchlist	Liquidated Damages Per Day
\$	1,000	to \$25,000	\$ 100
	25,001	to 50,000	125
	50,001	to 100,000	150
	100,001	to 250,000	175
	250,001	to 500,000	200
	500,001	to 1,000,000	250
	1,000,001	to 2,000,000	300
	2,000,001	to 3,000,000	375
	3,000,001	to 4,000,000	500
	4,000,001	to 5,000,000	625

5,000,001	to	6,000,000	750
6,000,001	to	7,000,000	875
7,000,001	to	8,000,000	1,000
8,000,001	to	9,000,000	1,125
9,000,001	to	10,000,000	1,250
10,000,001	to	11,000,000	1,375
11,000,001	to	12,000,000	1,500
12,000,001	and over		\$12.50 per \$100,000

ARTICLE 11

PAYMENTS TO THE CONTRACTOR

- 11.1 **Monthly Statements** – The Contractor shall submit to the Owner a statement, sworn to if required, along with the cost reports required under Article 2 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 Contractor’s fees due as provided in Article 6. This data shall be attached to the Partial Pay Request form shown in Exhibit A. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At 50% completion, the Owner may approve a reduction of the retainage from 10% to 5% at his discretion. Retainage shall not be withheld on services or fees set forth in Article 6.
- 11.2 **Final Payment** – Final Payment constituting the unpaid balance of the Cost of the Project and the Contractor’s fee, shall be due and payable after the Owner has accepted occupancy of the project, provided that the Project be then finally completed, that the Contractor has verified by his signature that he has completed all items specified on the attached Exhibit C, and that This Agreement has been finally performed. However, if there should remain work to be completed, the Contractor and the Architect/Engineer shall list those items prior to receiving 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 Contractor’s retainage, provided that said unfinished items are likewise listed separately. Thereafter, Owner shall pay to the Contractor, monthly, the amount retained for each incomplete item after each of said items is completed.
- 11.3 **Payments to Subcontractors** – The Contractor shall promptly, within 10 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on the Contractor’s evaluation of the subcontractor’s acceptable performance and when a subcontractor has completed 100% of his work, the Owner may approve a reduction in retainage from 10% to 5% thereafter. If there should remain items to be completed, the Contractor and Architect/Engineer shall list those items required for completion and the Contractor 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 Contractor shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner’s operating and maintenance personnel is complete.
- Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval by the Owner, Contractor and A/E.
- 11.4 **Delayed Payments by Owner** - If the Owner should fail to pay the Contractor within thirty (30) days after the receipt of an approvable payment request from the Contractor, then the Contractor may, upon seven (7) additional days written notice to the Owner and the Architect/Engineer stop the Project until payment of the Amount owing has been received. Interest on funds delayed shall be prime at date of contract plus 2% beginning on 31st day. The Owner will be responsible for all costs associated with “stopping” and “restarting” the work.
- 11.5 **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.

- 11.6.1 Delayed Payments To Subcontractors – The Contractor may withhold payments to subcontractors if subcontractor has not completed the work per plans and specifications. Should this occur, the Contractor shall provide a weekly report to Owner listing all outstanding payments to subcontractors. The Owner may request large or unusual payment amounts returned. Interest monies earned on withheld payments shall be returned to the Owner in the form of a credit to the cost of the project at the next draw request.

ARTICLE 12

INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

12.1 Indemnity

- (1) The Contractor agrees to indemnify and hold the Owner and Architect/Engineer harmless from all claims for bodily injury and property damage (other than the work itself and other property insured under Paragraph 12.2(3)) that may arise from the Contractor's operations under this Agreement.
- (2) The Owner shall cause any other Contractor who may have a contract with the Owner to perform construction installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Contractor and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 12.2(3)) that may arise from the Contractor's operations. Such provisions shall be in a form satisfactory to the Contractor.

12.2 Contractor's Insurance

- (1) The Contractor shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
- (2) Worker's Compensation Insurance – The Contractor shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Contractor shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected.
- (3) Contractor's Public Liability and Property Damage Insurance – The Contractor shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:

(a) Contractor's Comprehensive General Liability Coverage's, Bodily Injury & Property Damage	\$500,000 each Occurrence Combined Single Limit
(b) Automobile Liability Coverage's, Bodily Injury & Property Damage	\$100,000 Each Occurrence Combined Single Limit
(c) Excess Liability, Umbrella Form	\$2,000,000 Each Occurrence Combined Single Limit

Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

- (4) Subcontractor's Public Liability and Property Damage Insurance – The Contractor shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified

above or insure the activities of his subcontractors in his policy in an amount that is appropriate for the work to be performed.

- (5) Owner's and Contractor's Protective Liability Insurance – The Contractor shall procure as a cost of the project and furnish an Owner's and Contractor's Protective Liability Insurance Policy with the following minimum limits:
- | | |
|--|--|
| (a) Bodily Injury Liability &
Property Damage Liability | \$500,000 Each Occurrence
Combined Single Limit |
|--|--|
- (6) “XCU” (Explosion, Collapse, Underground Damage) – The Contractor's Liability Policy shall provide “XCU” coverage for those classifications in which they are excluded.
- (7) Broad Form Property Damage Coverage, Products & Completed Operations Coverage's – The Contractor's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverage's.
- (8) Contractual Liability Work Contracts – The Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Agreement to the extent covered by a standard Insurance Standards Office (ISO) General Liability policy.
- (9) Indemnification Rider
- (a) To cover to the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer and their agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- (b) In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (c) The obligations of the Contractor under this Article 12.2(9) shall not extend to the liability of the Architect/Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect/Engineer, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.
- (d) The Contractor hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner and acknowledges receipt of ten dollars and other good and valuable consideration from the Architect/Engineer in exchange for giving the Owner and Architect/Engineer, respectively, the indemnification provided above in Article 12.2.9.
- (10) Builder's Risk Coverage – The Contractor shall take out and maintain during the life of this Agreement a “Builder's Risk Policy” completed value form as a cost of the Project, issued to provide coverage's on an “all risk” basis including theft and stored materials. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to substantial completion of the Project. The policy shall have a deductible in an amount acceptable to the Owner and that meets the industry standards and any losses not covered by insurance shall be paid by the Owner out of unforeseen conditions and the Owner shall be listed as an additional insured.
- (11) Certificate of Insurance – The Owner shall be furnished proof of coverage of Insurance as follows:
Certificate of Insurance form will be furnished to the Owner along with the Contract Documents. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the Department of Construction Services. This Certificate shall be dated and show:
- (1) The name of the insured Contractor, the specific job by name and number, the name of the insurer, the number of the policy, its effective date, and its termination date.

- (2) Statement that the Insurer will mail notice to the Owner and a copy to the Architect/Engineer at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
- (3) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverage's required Article 12.
- (4) The Owner shall be named as additional insured on the Contractor's Liability policy and Builders Risk Policy.

12.3 Waiver of Subrogation

- 12.3.1 The Owner and the Contractor waive all rights against each other, for damages caused by perils covered by insurance provided under Article 12 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Contractor as trustees. The Contractor shall require similar waivers from all subcontractors and their sub-contractors.
- 12.3.2 The Owner and Contractor waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all subcontractors and their sub-subcontractors.
- 12.3.3 The Owner waives subrogation against the Contractor on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 12.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 13

TERMINATION

- 13.1 Termination by the Contractor – 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 other than the Owner as the contracting party, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor, or if the Project should be stopped for a period of sixty (60) days by the Contractor, for the Owner's failure to make payments thereon, then the Contractor may, upon seven (7) days written notice to the Owner, terminate this contract and request payment for all work executed, the Contractor'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 Contractor.
- 13.2 Owner's Right to Perform Contractor's Obligations and Termination by Owner for Cause

- (1) If the Contractor fails to perform any of his obligations under this Agreement including any obligation he performs with his own forces, the Owner may, after seven (7) days produce a written notice to the Contractor allowing fourteen (14) days to cure the problem. If during the fourteen-day period, the Contractor fails to perform such obligations and make good such deficiencies, the Contractor's Construction Phase Fee shall be reduced by the cost required to cure the deficiencies.
- (2) If the Contractor is adjudged 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 forty-five (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 Contractor and his surety, if any, seven (7) days written notice, during which period Contractor fails to cure the violation, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the Project by whatever method he may deem expedient. In such case, the Contractor 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 termination expenses incurred by the Owner may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontract work).

- (3) If the Contractor 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 Contractor in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and his Surety, if any, seven (7) days written notice, during which period Contractor still fails to allow access, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Contractor, and may finish the project by whatever method he may deem expedient. In such case, the Contractor 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 Contractor (excluding monies owed the Contractor for subcontract work).

13.3 Termination by Owner Without Cause

- (1) If the Owner terminates this Agreement other than pursuant to Article 13.2(2) or Article 13.3(2), he shall reimburse the Contractor 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 Contractor 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 Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article 13, 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 Contractor under such obligations or commitments.
- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Stage III, 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 Contractor his proportionate fee due in accordance with Article 6.1 plus any costs incurred pursuant to Articles 7, 8 and 9.

ARTICLE 14

ASSIGNMENT AND GOVERNING LAW

- 14.1 Neither the Owner nor the Contractor shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 14.2 This Agreement shall be governed by the Laws of the State of Florida.

ARTICLE 15

SPECIAL PROVISIONS

- 15.1 Costs not included in the Total "Not to Exceed" cost of reimbursables listed in 6.1 above are as follows:

Safety Awards	(to be billed at <u>N/A</u> % of the Contract Amount)
General Liability Insurance	(to be billed at <u>.25%</u> of the Contract Amount)
Performance & Payment Bond (CM)	(to be billed at <u>.86%</u> of the Contract Amount)
Builder's Risk Insurance	(to be billed at Invoice Amount)
Preconstruction Costs	(to be billed per Article 15.2.11)

- 15.2 The following articles and/or provisions should be added for clarification.

- 15.2.1 Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid to employees of Contractor and included in the Cost of Work under Articles 6.1.1. at the rate of 51% of said wages and 51% of said salaries.
- 15.2.2. Rental charges of all necessary machinery and equipment including office equipment, exclusive of hand tools, used at the site of the Work, whether rented from Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges as published in the Compilation of Nationally Averaged Rental Rates for Construction Equipment, Associated Equipment Distributors, Chicago (most recent edition);
- 15.2.3 Cost of premiums for all bonds and insurance, including Builder's Risk and General Liability (general liability will be charged at the rate of .25% of the final contract amount, and Bond will be charged at a rate of .86% of the final Contract amount). Which Construction Manager is required by the Contract Documents to purchase and maintain and/or Construction Manager requires, including cost of Performance & Payment Bonds for subcontractors and/or suppliers. In the event that Payment and Performance Bonds are not required for Subcontractors, Construction Manager shall be paid for losses, not associated with gross negligence, or willful or wanton misconduct, occasioned by forfeiture, bankruptcy, including legal fees, or other default of any subcontractor or supplier.
- 15.2.4 Permit fees, licenses, royalties, and damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes other than Construction Manager's negligence.
- 15.2.5 Costs incurred due to an emergency affecting the safety of persons and property.
- 15.2.6 Cost of labor, material and equipment required for handling, storing, and placing and affixing Owner-furnished material and equipment. This does not apply to Direct Materials Purchased (DMP) items.
- 15.2.7 Demobilization, restocking and cancellation costs associated with early termination of the Work.
- 15.2.8 Costs of arbitration, mediation and/or reasonable attorneys' fees incurred in connection with the administration of the Contract Documents, provided, however, that the terms of this Article shall not apply to the cost of arbitration, mediation and/or reasonable attorneys' fees between Construction Manager and Owner. All such arbitration, mediation and/or reasonable attorneys' fees shall be for the benefit of Owner. Arbitration or mediation shall not begin without notice to and approval of Owner.
- 15.2.9 Costs of correction of the Work, if the costs are not attributable to gross negligence or willful or wanton misconduct of Construction Manager (even if incurred after Final Completion). This shall not apply to work which is the responsibility of subcontractors except in the case of a subcontractor's default.
- 15.2.10 Other costs incurred in the performance of the Work, if and to the extent, approved in advance in writing by Owner.
- 15.2.11 Costs associated with the Preconstruction Phase in the sum total amount of \$28,350.00. These Costs will be invoiced monthly and will be paid for by the Owner at the time of GMP approval.
- 15.2.12 See Exhibit E – for PMIS Report Format.
- 15.2.13 Cost of reimbursables in Article 6.1.1 may be adjusted above the "Not to Exceed" with prior written approval from the Project Director.
- 15.2.14 Costs associated with the Investigative Report is the sum total of \$19,269.00. These costs will be invoiced monthly and will be paid for by the Owner at the time of GMP approval.
- 15.3 Costs Not To Be Reimbursed
- 15.3.1 Except as provided in 6.1, the Cost of the Work shall not include:
- (1) Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office.
 - (2) Expenses of the Construction Manager's principal office and offices other than the site office.

- (3) Off-site overhead and general expenses.
- (4) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- (5) Except as provided in Subparagraph 15.2.11, any costs not specifically and expressly described in Paragraph 6.1.1.
- (6) Exhibit F, attached, for Construction Manager's clarification to 6.1.1.

ARTICLE 16

FORCE MAJEURE, FIRE OR OTHER CASUALTY

16.1 Force Majeure

- (1) Delays in any performance by any party contemplated or required hereunder due to: fire, flood, earthquake or hurricane, acts of God, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated and without the fault or negligence of the party seeking excuse from performance, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure, the date for performance required or contemplated by this Agreement shall be extended by the number of calendar days such party is actually delayed in such substantial completion.
- (2) The party seeking excuse for nonperformance on the basis of Force Majeure shall promptly give written notice to the Owner, if with respect to the CM, or to the CM, if with respect to the Owner, specifying its, actual or anticipated duration, and weekly thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis for Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

16.2 Casualty; Actions by Owner & CM. During the Construction Period, if the Project, or any part thereof, shall have been damaged or destroyed, in whole or in part, the CM shall promptly make proof of loss and Owner and CM shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The CM shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses and other changes, including normal and ordinary compensation to the CM, necessary for reconstruction of the Project substantially in accordance with the Project Plans and Specification. Within fifteen (15) days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the CM covenants and agrees diligently to commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the Project to substantially the same size, floor area, cubic content and general appearance as prior to such loss or damage:

- (1) receipt by the Owner or the Trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction; and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;
- (2) written agreement executed by the CM and the Owner, by amendment to this Agreement or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required amendment to the GMP; and
- (3) final approval by the Owner of the Project Plans and specification for such repair or reconstruction and issuance of any required Building Permit.

16.3 Approval of Plans and Specifications. The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the Project, or the damaged portion thereof, to be substantially the same condition as prior to such loss or damage and such plans and specifications conform to the applicable laws, ordinance, codes and regulations. The owner agrees that all proceeds of any applicable insurance or other proceeds received by the owner

or the CM as a result of such loss or damage shall be used solely for payment of the costs, expenses, and other charges of the reconstruction or repair of the Project.

- 16.4 Notice of Loss or Damage. The CM shall promptly give the Owner written notice of any significant damage or destruction to the project, defined as loss or damage which it is contemplated by CM will increase the GMP or extend the date of substantial completion, then expectations of CM as to the effect of such damage or destruction on the use of the Project, and the then proposed schedule, if any, for repair or reconstruction of the Project. Loss or damage, which the CM determines, will not affect the GMP or date of substantial completion will be reported to the Owner and A/E immediately and associated corrective actions will be undertaken without delay.

CONSTRUCTION MANAGER:

By: _____
(Corporate Secretary Signature)

By: _____
Jerry Siminski, Sr. Vice President
Creative Contractors, Inc.

As Witnessed:

Creative Contractors, Inc.

(Corporate Seal)

**OWNER:
SCHOOL BOARD OF MANATEE COUNTY, FLORIDA:**

Approved As to Form: _____, Project Director

_____, Director

_____, Assistant Superintendent

Approved As To Form and Legality: _____, Attorney

Superintendent of Schools: _____

School Board Chairman: _____

Witness: _____

EXHIBIT A
DEPARTMENT OF CONSTRUCTION SERVICES
SCHOOL BOARD OF MANATEE COUNTY
CONTRACTORS CERTIFICATE OF PARTIAL PAYMENT

Contractor: (CM Firm) _____
(Address) _____
Architect-Engineer Job No: _____
Contract Time (Calendar Days): _____
Time Elapsed to Date: _____

Request No: _____
For Period Ending: _____
Project Name: _____
Project No: _____

ADDITIONS \$ DEDUCTIONS \$

Change Orders Approved
In previous months by
Owner – Total _____

Subsequent Change Orders

Number	Approved	_____	_____
	(Date)	_____	_____
TOTALS		_____	_____

Original Contract Sum: \$ _____
Change Orders (Net): \$ _____
Less Direct Material
Purchased by Owner \$ _____

Contract Sum to Date: \$ _____
Balance to Finish: \$ _____
Completed to Date: \$ _____
Materials Stored: \$ _____
Total Completed/Stored: \$ _____
Less Retainage _____% \$ _____
Add Back Retained Amount
Covered by Securities \$ _____
TOTAL \$ _____
Less Previous Certificates \$ _____
THIS CERTIFICATE: \$ _____

Net Change by Change Orders \$ _____

SHOW INDIVIDUAL MCSB PAYMENTS SEPARATELY ON TOTAL AMOUNT PAID THIS CERTIFICATE
SCHEDULE OF VALUES AND TOTAL ON THIS LINE TO MCSB SUBCONTRACTORS \$ _____

CERTIFICATION BY THE CONTRACTOR: according to the best of my knowledge and belief, I certify that all items and amounts shown on the face of this Application are correct, that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract, and that all materialmen, laborers and subcontractors, as defined in Chapter 713.01, Florida Statutes, have been paid the amounts due them out of any previous payments made to the contractor by the Owner. Further, I agree to promptly pay each materialmen, laborer and subcontractor as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the Owner, out of the amount paid to me on account of such materialmen's laborer's or subcontractor's work, the amount to which said materialmen, laborer and subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such materialmen's, laborer's and subcontractor's work.

CONTRACTOR: _____

By: _____

Contractor's Representative

Subscribed and sworn to before me this _____
Day of _____, 20 _____
Notary Public: _____
My Commission Expires: _____

Date: _____
State of: _____
County of: _____

CERTIFICATION BY THE ARCHITECT-ENGINEER: I certify that I have checked and verified this Progress Payment Application; that to the best of my knowledge and belief, the above application is a true statement of the value of the work performed and the materials suitably stored on the site; that all work and materials included in the Certificate have been inspected by me or by my authorized assistants; that all work has been performed and material supplied in full accordance with the terms of this Contract; and I approved for payment the amount noted above:

Architect-Engineer
REVIEWED AND RECOMMENDED FOR PAYMENT

Date: _____

MCSB Project Director,
APPROVED FOR SERVICES, PERFORMED AS STATED

Date: _____

EXHIBIT B

LIST OF CM EMPLOYEES

EMPLOYEE	TITLE	% TIME ON JOB
Jerry Siminski	Sr. Vice President Project Executive	0%
Jim Cacini	Vice President	0%
Van Mitchell	Project Manager	100%
Jimmy Mays	Superintendent	100%
Frank Sparks	Superintendent	100%
Paul Archacki	Assistant Project Mgr.	100%

EXHIBIT C

ITEMS TO BE SUBMITTED WITH GENERAL CONTRACTOR’S REQUEST FOR FINAL PAYMENT

- _____ 1. Rush Requisition Routing Slip
- _____ 2. Pay Request (4 copies with original signatures and original seals, noted as Final)
- _____ 3. Final Schedule of Contract Values
- _____ 4. Consent of Surety to make final Payment (signed and sealed)
- _____ 5. Power of Attorney from Surety for Release of Final Payment (Signed and sealed and dated same as Consent of Surety)
- _____ 6. Certificate of Contract Completion
 - a. page one completed by the general contractor (original plus three copies)
 - b. page two completed by Architect-Engineer (original plus three copies)
- _____ 7. Satisfactory Conclusion or Release of Lien from all subcontractors or laborers who have filed Intent to Liens or have indicated non-payment from the general contractor.
- _____ 8. Contractor’s Guarantee of Construction for one year from the date of substantial completion
- _____ 9. Copy of the approval by the Architect-Engineer and the transmittal to the using agency of manuals, shop drawings, as-builts (one set of sepias, two sets of prints), brochures, warranties, and List of Subcontractors, with telephone numbers and addresses.
- _____ 10. Verification that Using Agency personnel have been trained in the operation of their new equipment (per system: HVAC, controls, fire alarm, etc.), attendance lists and preferred
- _____ 11. Fully executed Roof Warranty (if applicable) in the name of the Using Agency
- _____ 12. Other special warranties as required by specifications, in the name of the Using Agency
- _____ 13. Architect’s Certificate of Specification of Asbestos Containing Materials
- _____ 14. Contractor’s Certificate of Asbestos Use
- _____ 15. Copy of Certificate of Occupancy

NOTE: The Project Director shall verify the math on all Pay Requests prior to signing Final Pay Request to assure correct payment.

Project Number: _____

Project Name and Location: _____

Project Director Signature: _____

EXHIBIT D

CONSTRUCTION TEAM REPRESENTATIVES

SBMC Project Director	Tom Reifenrath
SBMC Project Representative	N/A
SBMC Facilities Expediter	Terry Braza
Architect	Alexander Long Long & Associates Engineers/Architects, Inc. 4525 S. Manhattan Ave.; Tampa, FL 33611
Civil Engineers	To Be Determined
Structural Engineer	To Be Determined
Mechanical Engineer	Alexander Long Long & Associates Engineers/Architects, Inc. 4525 S. Manhattan Ave.; Tampa, FL 33611
Electrical Engineer	Alexander Long Long & Associates Engineers/Architects, Inc. 4525 S. Manhattan Ave.; Tampa, FL 33611
Construction Manager	Van Mitchell Creative Contractors, Inc. 620 Drew St.; Clearwater, FL 33755
Board Member	Harry Kinnan
SBMC Instructional Member	Jeff Asher, Principal
SAC Member	To Be Determined

EXHIBIT E

PMIS MONTHLY REPORT FORMAT

1. Cover Sheet
 - Standard Cover with New Logo
 - Project Description

2. Executive Summary
 - Brief Project Description
 - Summary of Status of Job – Narrative Form

3. Contract Cost Status
 - Owner Change Orders
 - Contractor Change Orders
 - Direct Purchasing Status/Sales Tax Savings
 - Miscellaneous Cost Status (As applicable):
 - Unforeseen Condition Cost Allocations
 - Allowances
 - Cost Saving Alternates

4. Project Schedule
 - Narrative Schedule Summary
 - Updated Progress Schedule

5. Critical Issues
 - RFI Status
 - Submittal Status
 - Action Items
 - Owner Issues
 - Architect Issues
 - Contractor Issues

6. Subcontractor/Vendor Listing
 - Subcontract Commitment Status

7. Payment
 - Monthly Payment Application
 - Cash Flow Schedule

8. Progress Photographs
 - Aerial
 - A. Dated Photos (as required)

EXHIBIT F

A. Omit or modify the following Articles and/or subparagraphs that are not applicable for this project.

Article 1: add new section, which shall read as follows:

- 1.4.8 Substantial Completion – The term “substantial completion” shall mean that the project under this contract is sufficiently completed in accordance with the contract documents, so that the owner can occupy or utilize the work or designated portions thereof for the use for which it is intended, as expressed in the contract documents and a certificate of occupancy has been issued by the permitting authority and a substantial completion certificate has been fully executed. (Note: The issuance of a certificate of occupancy, in itself, does not constitute “substantial completion”).
- 1.4.9 Final Completion – The term “Final Completion” shall mean all of the following events have occurred:
- 1) Pursuant to the terms of the contract, an architect or engineer certifies that the project is substantially complete and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.
 - 2) The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.
 - 3) The owner takes possession of the Project and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

B. The following “Prohibition Against Contingent Fees” clause shall be added to this Agreement:

By signing this Agreement, the Construction Manager warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for this firm to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for this firm any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

C. The following “Truth-In-Negotiation” clause shall be added to this Agreement:

By signing this Agreement, the Construction Manager certifies that wage rates and other factual unit costs supporting the compensation to be paid under this contract are accurate, complete and current as of the date of this contract.

It is further agreed that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which it is determined the contract prices was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

D. Add to Project Description:

The scope of work required for the Manatee High School – Davis Building Remodeling and Renovation shall be established after completion of an investigative report which shall include structural issues as well as systems, drainage, cosmetic, and functional remodeling and renovation. The Creative Contractors, Inc. proposal dated March 19, 2007 is herewith incorporated by reference.