

**MASTER AGREEMENT
CONSTRUCTION MANAGEMENT SERVICES**

This Master Agreement made this 11 day of December, 2012, by and between the St. Lucie County School Board (hereinafter referred to as the "School Board" or "Owner") and The Morganti Group, Inc, (hereinafter referred to as "The Morganti Group Inc." or "Contractor").

WITNESSETH:

WHEREAS, the St. Lucie County School Board is authorized to enter into professional services agreements with construction management companies pursuant to Sections 1012.45 and 287.055, Florida Statutes; and

WHEREAS, the School Board is in need of construction management services for Continuing Service projects, hereafter referred to as the project; and

WHEREAS, the School Board finds that it is in the best interest of the School District to enter into this Master Agreement with Morganti Group Inc., in order to set forth the general terms and conditions by which each individual project will be governed.

NOW, THEREFORE, in accordance with the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1
CONSTRUCTION TEAM, CONTRACT DOCUMENTS, AND DEFINITIONS**

- 1.0 Contractor accepts the relationship of trust and confidence established between Contractor and the Owner by this Agreement. Contractor covenants with the Owner to furnish Contractor's best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. Contractor agrees to furnish efficient business administration and superintendence and use Contractor's best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner.
- 1.1 The Construction Team. Contractor, the Owner and when applicable 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 Contractor and Contractor shall provide leadership to the Construction Team on all matters relating to construction.
- 1.2 Contract Documents. The Contract Documents consist of the Master Agreement between Owner and Contractor (hereinafter the Agreement), the Project Agreement, Conditions of the Agreement (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Project Agreement, other documents listed in the

Agreement and Modifications issued after execution of the Project Agreement. A Modification is (1) a written amendment to the Project Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Project Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, Contractor's bid or portions of addenda relating to bidding requirements).

1.3 Definitions.

Architect-Engineer - The design professionals responsible for preparing plans and specifications for each Project. Whether the Architect-Engineer is on the team shall be determined on a project by project basis.

County - St. Lucie County Board of Commissioners

Construction Manager at Risk - The firm designated by the Owner to provide all work required by the Agreement Documents for the Project. The Contractor will not be responsible for design.

Contractor - The Morganti Group Inc.

Estimate - Contractor's latest estimate of probable project construction cost.

Notice to Proceed - A written notice issued by the Owner's Contract Administrator authorizing Contractor to proceed with a project pursuant to the terms of a Project Agreement.

Owner - The St. Lucie County School Board or those persons designated by the School Board to act in its behalf.

Owner's Construction Budget - Owner's funds budgeted and requested for Project construction. The Owner's Construction Budget for each specific Project includes all Contractor fees, costs of the work and the Owner's and Contractor's construction and interface contingencies as defined herein. This acknowledgment of the Owner's budgeted funds is not to be construed as Contractor's Guaranteed Maximum Price. A Guaranteed Maximum Price will be set forth in the Project Agreement.

Owner's Project Budget - The Owner's funds budgeted for the development of a project including the construction budget and all other fees, furnishing and equipment and other costs necessary to develop the project. The Project Budget will be determined for each specific Project.

Owner's Representatives - The Project Manager and his superiors or designees.

Project - The Project is the total construction of the Work performed under the Contract Documents and may be the whole or a part and which may include construction by the Owner or by separate contractors.

Project Agreement - A written agreement whereby the specific terms and conditions for a

specific project are set forth. There shall be a Project Agreement for each project contemplated under this Master Agreement which shall contain at a minimum: the guaranteed maximum price for the project; the number of days to substantial completion and final completion; the liquidated damages, if any; a list of all of the parties involved in the project; and a list of all of the documents, such as plans and specifications, incorporated into the Project Agreement.

Project Manager - The person designated by the Owner to provide direct interface with Contractor with respect to the Owner's responsibilities determined on a project by project basis.

Work - The term Work means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project

ARTICLE 2 CONTRACTOR'S SERVICES

2.0 The services which Contractor shall provide include, but are not limited to, those described or specified herein plus those identified in the Project Agreement. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS)

2.1.1 General:

- (1) Commencing immediately after execution of the Project Agreement, Contractor shall implement and shall utilize throughout the life of the Project all subsystems 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 each 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 monthly and shall accompany each pay request.
- (3) The PMIS shall be described in terms of the following major subsystems for projects. At the discretion of the Owner any of the following subsystems may be deleted:
 - (a) Narrative Reporting, on a monthly basis,
 - (b) Schedule Control, on a monthly basis,
 - (c) Cost Control, and estimating,
 - (d) Project Accounting.

2.1.2 Narrative Reporting Subsystem

- (1) Contractor shall prepare written narrative reports as follows:
 - (a) A Monthly Executive Summary.
 - (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 analysis 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;
 - (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.
 - (h) Contractor shall administer Owner's direct tax savings purchase plan that is part of the Contractor's services.
- (2) The reports outlined in subsection (1)(a) through (h) above shall be bound with applicable computer reports and submitted monthly during the construction phase and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and others designated by the Project Manager with the monthly pay requisition.
- (3) The report outlined in subsection (1)(f) above shall be maintained at the site available to the Owner at the conclusion of the Project.

2.1.3 Scheduled Control Subsystem

Master Project Schedule - Within thirty (30) days of executing a Project Agreement, Contractor shall submit, and the Construction Team shall approve, a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. The master project schedule shall be produced and updated monthly throughout the Project.

2.1.4 Cost Control Subsystem

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 the following submissions at the following phases of the project:

Estimates

- (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 100% Construction Documents Phase for each item or bid package.
- (d) At establishment of the Guaranteed Maximum Price.
- (e) Construction Documents Estimates - Prior to the bid of each bid package, when the working drawings and specifications are complete, the Contractor shall prepare and submit a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package.

2.1.5 Project Accounting Subsystem

The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project. The following reports shall be produced monthly:

- (1) 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 contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- (2) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

2.2 Project Manual

- (1) Upon award of contract the Contractor 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 Contractor, 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 Contractor shall coordinate with the Owner and the Architect-Engineer.
- (2) 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 at 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 Contractor, 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 Contractor and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Contractor, the Architect-Engineer, 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 Contractor. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Contractor 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 Contractor 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, and other necessary communications.

2.3 Pre-Construction Phase Services

- (1) Services which the Contractor shall include, but not be limited to, those described or specified herein and as agreed by the Construction Team as applicable to the work required by the Project Agreement.
 - (a) Provide value engineering recommendations to maximize the Owner'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.
- (i) Prepare and issue bid packages, open and evaluate bids from the responding bidders form 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 v. 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; providing bonding for projects.

2.4 Design Review and Recommendations

- (1) Review and Recommendations and Warranty - Contractor shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications and shall follow the development of design from preliminaries through working drawings. Contractor 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. Contractor shall furnish pertinent information as to the availability of materials and labor that will be required. Contractor shall submit to the Owner, Permitting Authority, if necessary, and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. Contractor shall call to the Project Manager's and the Architect-Engineer's attention any apparent defects in the design, drawings and specifications or other documents. Contractor shall prepare an estimate of the construction cost utilizing the unit quantity survey method.

CONTRACTOR'S WARRANTY:

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

OWNER'S DISCLAIMER OF WARRANTY:

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

- (2) Long Lead Procurements - The Contractor shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Contractor shall notify the subcontractors, the Project Manager and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the Contractor has obtained permitting approval, the Contractor shall prepare invitations for bids. The Contractor shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Project Manager, Owner and Architect-Engineer of any problems or prospective delay in delivery.
- (3) Separate Contracts Planning - Contractor 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 Contractor to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. Contractor 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.
- (4) Interfacing - Contractor shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts 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 subcontract, its schedule for start and completion and its relationship to other separate contractors.
- (5) Job-Site Facilities - At the Owner's option and direction, Contractor shall arrange for all job-site facilities necessary to enable Contractor and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction. This shall be determined by the Owner on a project by project basis.

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 Contractor 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. Contractor shall present its evaluation with recommendation to the Owner for approval. The Owner shall have final authority in equipment lease purchase matters. With the Owner's approval, Contractor may supply

Job-Site Facilities and equipment from Contractor's own equipment pool.

- (6) Weather Protection - Contractor 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. Contractor shall submit to the Construction Team its recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.
- (7) Market Analysis and Stimulation of Bidder Interest
 - (a) The Contractor 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.
 - (b) Within 30 days after receiving Notice to Proceed, the Contractor shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Contractor shall submit to the Project Manager and the Architect-Engineer a list of potential bidders. The Contractor shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
 - (c) The Contractor shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.5 Construction Phase

- (1) Contractor's Staff - Contractor shall maintain sufficient off-site support staff, and competent staff at the Project site authorized to act on behalf of Contractor to coordinate, inspect and provide general direction of the work and progress of the subcontractors and Contractor shall provide no less than those personnel during the respective phases of construction. He shall not change any of those persons unless mutually agreed to by the Owner and Contractor. In such case, the Owners shall have the right of approval of the qualifications of replacement personnel. Such approval shall not be unreasonably withheld.
- (2) Lines of Authority - Contractor shall establish and maintain lines of authority for Contractor's personnel, and shall provide this definition to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The

Owner and Architect-Engineer may attend meetings between Contractor and its Subcontractors, however, such attendance shall not diminish either the authority or responsibility of Contractor to administer the subcontractors.

(2) Schedule and Project Manual Provisions - The Contractor shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual (total number of copies not to exceed 10) developed and updated as required by Article 2.2 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 subcontractors 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 Contractor's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long 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 subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

(4) Solicitation of Bids.

(a) Without assuming responsibilities of the Architect-Engineer, Contractor shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, for subcontractor contracts and for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

1. Individual purchases of materials or rentals or leases of equipment amounting to less than \$1,000.00 each may be made without bids or quotes when reasonably necessary to expedite work on the project, however, Contractor shall not divide or separate a procurement in order to avoid the requirements set forth herein.
2. Contracts over \$1,000 but not exceeding \$5,000 may be entered into by Contractor with the firm which submits the lowest verbal quotation. Contractor shall obtain a minimum of two (2) verbal quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the Owner, Architect-Engineer and to each firm. The successful quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of work to be provided.
3. Contracts exceeding \$5,000 but not exceeding \$200,000 may be entered into by Contractor with the firm who is qualified and submits the lowest responsive proposal. Contractor shall request at least three (3) firms to submit sealed written proposals based on written drawings and/or specification. The

written proposals shall all be opened publicly at the location, date and time named by Contractor in the request for proposal. A tabulation of the results shall be furnished to the Owner, Architect-Engineer and to each firm.

4. Contracts exceeding \$200,000 but not exceeding \$500,000 may be entered into by Contractor with the firm who is qualified and submits the lowest responsive proposal. Contractor shall advertise these projects at least once with the last advertisement appearing at least 21 calendar days prior to the established bid opening date. These proposals shall be based on approved plans and specifications. Bids shall be received and opened publicly at the location, date and time established in the bid advertisement.
5. Site utilities shall be acquired at market rates from the appropriate entity providing such utilities to the project site.
 - (a) As part of such preparation, Contractor 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 Contractor shall be brought to the attention of the Project Manager and Architect-Engineer in written form.
 - (b) For each separate construction contract exceeding \$25,000, Contractor shall, unless waived by Owner, conduct a pre-bid conference with prospective bidders, the Architect-Engineer and Project Manager. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, Contractor shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
 - (c) For all contracts exceeding \$25,000, the Contractor shall establish a pre-qualification procedure for applicable subcontract trades.
- (5) Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Contractor 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 Guaranteed Maximum Price ("GMP") as set forth in the Project Agreement and inclusive of Contractor's fees.

To be acceptable to the School Board as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. 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.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. 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.
- (6) Quality Control - Contractor shall develop and maintain a program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. Contractor shall supervise the work of all subcontractors providing instructions to each

when their work does not conform to the requirements of the plans and specifications and Contractor shall continue to exert its influence and control over each subcontractor 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 Contractor and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

- (7) Subcontractor Interfacing - Contractor shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. Contractor shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors 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, Contractor shall act immediately to remove the threat to health and safety. Contractor 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 Contractor who will then issue the shop drawings to the affected subcontractor for fabrication or revision. Contractor shall maintain a suspense control system to promote expeditious handling. Contractor shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of Contractor by the subcontractors and shall maintain a suspense control system to promote timely response. Contractor shall advise the Project Manager and Architect-Engineer when timely response is not occurring on any of the above.
- (8) Permits. With all necessary cooperation by the Owner and Architect-Engineer, the Contractor shall secure all necessary building permits from the Permitting authority (St. Lucie County Public Schools). 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 Contractor.
- (9) Job Site Requirements - Contractor shall provide for each of the following activities as a part of Contractor's Construction Phase fee:
 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project..
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 6. Provide a quality control program as developed hereinabove.
 7. Provide miscellaneous office supplies that support the construction efforts which are consumed by Contractor's own forces.
 8. Travel to and from Contractor's home office to the project site as the project requires.

In addition, Contractor shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:

1. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.

2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by all necessary permitting authorities inspectors.
- (10) Job Site Administration - Contractor shall provide as part of Contractor's 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 subcontractor's work. Review and implement revisions to the schedules. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, Owner and Contractor 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 establishing 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, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
 - (d) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
 - (e) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
 - (f) Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
 - (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
 - (h) Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. 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 Contractor wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with Contractor's own forces, the Architect-Engineer will prepare the pre-substantial punch list from which Contractor will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on his pre-substantial punch list has been accomplished.
 - (i) Final Completion - Monitor the subcontractor's performance on the completion of the project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and

waivers, manuals, record drawings, and maintenance books including the Final Completion form.

- (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 contractors.
- (k) Record Drawings - During the progress of the work, the Contractor shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. The Contractor 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.

Each drawing shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be distributed except as noted above.

The Contractor 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 Contractor shall furnish true elevations and locations, all properly referenced by using the original benchmark used for the institution or for this project. These As Built drawings shall be sent to the Architect-Engineer who will prepare final record drawings.

- (11) Administrative Records - Contractor will maintain at the job site or home office, as agreed to by the Project Manager, on a current basis, files and records such as, but not limited to the following:

- "As-Built" Marked Prints (defined in 10)
- Bid Analysis and Negotiations
- Bid/Award Information
- Bulletin Quotations
- Contract Drawings and Specifications with Addenda
- Contract Changes
- Contracts or Purchase Orders
- Correspondence Files
- Cost Accounting Records:
- Cost-Estimates
- Cost Proposal Requests
- Daily Progress Reports
- Design Handbooks
- Equipment Costs
- Equipment Purchase/Delivery Logs
- Inspection Reports
- Insurance Certificates and Bonds
- Lab Test Reports
- Labor Costs
- Material Costs
- Material Purchase Delivery Logs
- Meeting Minutes
- Monthly Progress Reports
- Operating & Maintenance Instruction
- Payment Request Records
- Project Status Reports
- PMIS Schedule and Updates
- Punch Lists
- Purchase Orders
- Sales Tax Recovery Status Reports

Shop Drawing Submittal/Approval Logs
Suspense (Tickler) Files of Outstanding Requirements
Technical Standards
Transmittal Records
Warranties and Guarantees

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

(12) Owner Occupancy:

Contractor shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. Contractor shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on line" in such conditions as will satisfy Owner operational requirements. Contractor shall conduct Contractor's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind. Contractor 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. Contractor shall provide operational training, in equipment use, for building operators. Contractor 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. Contractor shall continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible. The Owner will not occupy or take control of the project until the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements have been completed to the Owner's satisfaction.

(13) Warranty:

Where any work is performed by Contractor's own forces or by subcontractors under contract with Contractor, Contractor 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, Contractor 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. Contractor shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Warranty Inspections will be conducted nine (9) months after Owner Occupancy. These inspections will be conducted by Contractor, Owner and Architect-Engineer if applicable.

ARTICLE 3
OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information - The Owner shall provide full information regarding its requirements for each 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 any project. The Owner's Representative shall render decisions promptly and furnish information expeditiously.
- 3.3 Architect and Engineer's Agreement - The Owner may retain an Architect-Engineer for design and to prepare construction documents for the project.
- 3.4 Site Survey and Reports - The Owner shall furnish for the project site all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal

limitations, utility locations, 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.
- 3.6 Legal Services - The Owner shall furnish such legal services as may be necessary and such auditing services as it may require.
- 3.7 Drawings and Specifications - Contractor 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 Owner's expense, and Contractor 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, the Owner shall give prompt written notice thereof to Contractor and Architect-Engineer.
- 3.10 Funding - The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to Contractor that sufficient funds will be available and committed for the cost of each part of the Project. Contractor shall not commence any work, unless authorized in writing by the Owner.
- 3.11 Lines of Communication - The Owner and Architect-Engineer shall communicate with the subcontractors or suppliers only through Contractor 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 the Owner's personnel and shall provide this definition to Contractor and all other affected parties.
- 3.13 Permitting & Code Inspections - The Owner recognizes and coordinates with all necessary permitting authorities and expects Contractor to do the same.

ARTICLE 4 INSPECTION

Construction inspection for code compliance with drawing specifications and quality will be performed by inspectors working for the Owner. The building code inspection requirements shall be described as follows:

- 4.1 Code Inspections - All projects require detailed code compliance inspections during construction in disciplines determined by the Owner. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building. Inspection personnel will be provided by the Owner. Names, addresses, and phone numbers of the inspectors will be provided to Contractor by the Owner. Contractor shall notify the appropriate inspector(s), no less than 24 hours in advance, that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the permitting authority. All costs for uncovering and reconstruction shall be borne by Contractor. All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality. Cost for all reinspections of work found defective and subsequently repaired shall be borne by Contractor.

ARTICLE 5 SUBCONTRACTS

- 5.1 Definition - A subcontractor is a person or organization (other than the Owner) who has a direct contract with Contractor to perform any of the Work on the Project. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or Architect-Engineer and any subcontractor. Except that it is the express intent of the Owner and Contractor that the Owner shall be an intended beneficiary of all of the contracts between Contractor and subcontractors and Contractor shall ensure that each subcontractor contract expressly states such intent.
- 5.2 Proposals - Contractor shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after Contractor has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work.
- 5.3 Required Subcontractors' Qualifications and Subcontract Conditions.

- 5.3.1 Subcontractual Relations - By an appropriate written agreement, Contractor shall require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor by these Contract Documents, assumes toward the Owner and the Architect-Engineer. The subcontractor 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 subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each subcontractor to enter into similar agreements with its sub-subcontractor.

Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Article 5 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such Contract Documents available to its sub-subcontractors.

- 5.3.2 Subcontract Requirements

- (1) On all subcontracts where the bid exceeds \$100,000, 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 Contractor wishes to award subcontracts to contractors unable to supply this bonding, Contractor may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably.

- (2) Subcontract bidders must submit a completed experience questionnaire and financial statement on a form acceptable to Contractor. The subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
- (3) Workforce - The subcontractor must agree to perform no less than 15% of the project construction work utilizing its own employees unless this requirement is waived by Contractor and Owner for good cause shown.
- (4) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years unless this requirement is waived by Contractor and Owner for good cause shown.
- (5) Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work. This experience requirement may be waived by Contractor for good cause shown.
- (6) All subcontracts shall provide:
 - a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY** - That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.

The subcontract shall require that the subcontractor expressly agree that the foregoing constitutes its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

- b. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Contractor within the time and in the manner in which Contractor 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 - Contractor shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to Contractor.
- 5.5 Subcontracts to be provided. Contractor shall provide a copy of each subcontract including the general supplementary conditions.

ARTICLE 6
SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 At the time a Guaranteed Maximum Price (GMP) is established in the Project Agreement, a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the master project schedule, shall also be established by the Construction Team. Contractor agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and owner occupancy date. Contractor 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.

Failure to complete the work on time. It is mutually agreed by and between parties hereto that time shall be an essential part of this contract, and that in case of the failure on the part of the Construction Manager to achieve contractually scheduled completion of the milestones established in the Construction Managers project schedule within the time specified and agreed upon, the Owner will be damaged thereby; and the amount of said damages, inclusive of expenses for inspection(s), Architect's additional fees, as well as additional personnel superintendence, and necessary traveling expenses, being difficult if not impossible of definite sum, are set forth below in the Schedule of Liquidated Damages as liquidated damages for every calendar day's delay in finishing the work in excess of the number of calendar days prescribed; and the Construction Manager hereby agrees that said sum shall be deducted from monies due Construction Manager and hereby agrees to pay to the Owner as liquidated damages, and not by way of penalty, such total sum as shall be due for such duly computed aforesaid.

Liquidated Damages:	Prior to/After Substantial Completion
Less than \$2,500,000	\$500/\$125 per day
Between \$2,500,000 and \$10,000,000	\$1000/\$250 per day
Between \$10,000,000 and \$20,000,000	\$2500/\$625 per day
Over \$20,000,000	\$5000/\$1250 per day

Liquidated damages daily rates after Substantial Completion are at 25% of the daily rate prior to Substantial Completion.

Warranties called for by this Agreement or by the drawings and specifications shall begin on the date of owner occupancy of the project as set forth in the Project Agreement.

ARTICLE 7
GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

7.1 When the Documents are sufficiently complete to establish the scope of work for a project or any portion thereof, as generally defined by a design document 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, Contractor will establish and submit in writing to the Owner for Owner's approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the project or designated part thereof. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided herein. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined herein, plus Contractor's fees or the GMP, whichever is less when the work is complete.

7.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.

7.3 When the project is bid and 100% of the Trade Contracts have been executed, the contingency within the GMP shall 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, Contractor will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine Contractor'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. Contractor will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency. If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP.

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

ARTICLE 8 CONTRACTOR'S FEE

- 8.1 Contractor's fee shall be set forth in each **Project Agreement**.

- (1) Adjustments in Fee - For changes in the project as provided herein, the construction phase fee shall be adjusted as follows:
- (a) Contractor shall be paid an additional fee subject to negotiation if Contractor is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by Contractor.

Should the duration of the construction stipulated herein for Final Completion extend beyond the original duration due to no fault of Contractor, Contractor's Additional Construction Phase Fee will be adjusted by dividing the original fee by the number of original contract days multiplied by the number of days delayed.

Contractor will not be due any additional Overhead and Profit on increases in the Guaranteed Maximum Price (GMP) that do not exceed 5%. Should the GMP be increased by more than 5%, due to no fault of Contractor, Contractor's additional Overhead and Profit for the Construction Phase will be five percent of that portion of the accumulative increases in the GMP that exceed the GMP by more than 5%.

Contractor's Exclusive Remedy: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, Contractor's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction Phase fees and Overhead and Profit for Construction Phase as provided above.

- (2) Costs and Expenses Included in Fee - The following are included in Contractor's fee for services during the Construction Phase:
- (a) Salaries or other compensation of Contractor's employees at Contractor's principal office and branch offices attributed directly to the project.
- (b) General operating expenses related to this project of Contractor's principal and branch offices attributed directly to the project.
- (c) The costs of data processing staff attributed directly to the project.
- (d) Salaries or other compensation of Contractor's employees directly assigned to the job site.
- (e) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.

- (f) Those services required as Job Site Requirements.
- (g) Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., janitorial supplies (photo copy or blue print paper not included).

ARTICLE 9 COST OF THE PROJECT

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

The Owner agrees to pay Contractor for the Cost of the Project. Such payment shall be in addition to Contractor's fees established and set forth in the Project Agreement.

9.2 Direct Cost Items

- (1) Wages paid for labor (other than those labor costs paid for project management and supervision covered by Contractor's fee, in the direct employ of Contractor in the performance of his work under this Agreement, times a multiple of .67 to cover fringe benefits.
- (2) Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
- (3) Payments due to subcontractors from Contractor or made by Contractor to subcontractors for their work performed pursuant to contract under this Agreement.
- (4) Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and small tools not owned by the workmen, which are employed or consumed in the performance of the work, cost on such items used but not consumed which may be turned over to the Owner at the end of the project and cost less salvage value on such items used but not consumed which remain the property of Contractor.
- (5) Rental charges on all necessary machinery and equipment, exclusive of small tools used at the site of the Project, whether rented from Contractor 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 Contractor's own forces in the performance of the work. Rental charges must be consistent with those charges prevailing in the area.
- (6) Cost of the premiums for all insurance and cost of premiums for all bonds which Contractor is required to procure by this Agreement specifically for the construction project. This includes appropriate sub-contractor bonds.
- (7) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which Contractor is liable.
- (8) The cost of corrective work subject to the GMP, excluding any corrective work made necessary because of defective workmanship or other causes contributed to by Contractor or his subcontractors or suppliers. No costs shall be paid by the Owner to Contractor 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 Contractor.
- (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) Costs for trash and debris control and removal from the site.
- (11) Cost incurred due to an emergency affecting the safety of persons and property.

- (12) Costs of all reproductions used for bidding or information purposes required by the project.
- (13) Costs if necessary, for watchman and security services for the project.
- (14) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials, material storage and parking.
- (15) Costs for such temporary facilities during construction, as approved by the Owner, including temporary utilities, communications, computers and software.
- (16) All costs incurred in the performance of the project for the benefit of the project and not included in Contractor's fees.
- (17) Costs that may be incurred to furnish record drawing information.
- (18) Costs for independent testing and resulting documentation.
- (19) Costs for all permits.

ARTICLE 10
CHANGES IN THE PROJECT

- 10.1 Change Orders - The Owner, without invalidating the Project Agreement, may order Changes in the Project within the general scope of the Project Agreement consisting of additions, deletions or other revisions, with the GMP and the Construction Completion Date being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the Owner before the change is implemented.
- (1) A Change Order is a written order to Contractor signed by the Owner and issued after the execution of the Project 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.
 - (2) The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:
 - a. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 - b. by unit prices stated in the Project Agreement or subsequently agreed upon;
 - c. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 - d. by the method provided in subparagraph (3).
 - (3) If none of the methods set forth in subparagraph (2) is agreed upon, Contractor, provided Contractor receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work and Contractor shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under subparagraph (2) above, Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the GMP to be allowed by Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
 - (4) If unit prices are stated in the Project Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices and GMP shall be equitably adjusted.

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

10.2 Claims For Additional Cost Or Time

All claims for additional cost or time shall be made by request for a change order submitted as provided herein. If Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate contractor employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond Contractor's control or by delay authorized by the owner pending resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine. Only delays which are determined to materially affect the critical path schedule for the Project will result in a time extension.

10.3 Minor Changes In The Project

The Owner or Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the GMP or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS.

10.4 Emergencies

In any emergency affecting the safety of persons or property, Contractor shall act at Contractor's discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by Contractor on account of emergency work shall be determined as set forth herein.

**ARTICLE 11
DISCOUNTS AND PENALTIES**

- 11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the project is paid directly by the Owner. To the extent the Cost of the Project is paid with funds of Contractor, all cash discounts shall accrue to Contractor. 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 Contractor for late payment of cost of the project will be paid by Contractor.

**ARTICLE 12
PAYMENTS TO THE CONTRACTOR**

- 12.1 Monthly Statements - Contractor shall submit to the Owner a sworn statement, along with the cost reports required herein, 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 Contractor's fees due as provided in the Project Agreement. This data shall be attached to the Partial Pay Request form. 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% for the remaining partial payment at Owner's sole discretion.
- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and 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 Contractor has verified by an authorized signature that Contractor has completed all items specified, and that the Project Agreement has been finally performed. However, if there should remain work to be completed, 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 Contractor'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 Contractor, monthly, the amount retained for each incomplete item after each of said items is completed.

- 12.3 Payments to Subcontractors - 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 Contractor's and the Owner's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from 10% to 5% for partial payments thereafter. If there should remain items to be completed, Contractor shall list those items required for completion and 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, 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 of the Owner.

- 12.4 Delayed Payments by Owner - If the Owner should fail to pay Contractor within 30 days after the receipt of an approvable payment request from Contractor, then 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.
- 12.5 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.
- 12.6 Withholding Payments To Subcontractors - Contractor shall not withhold payments to subcontractors if such payments have been made to Contractor. Should this occur for any reason, Contractor shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping as required.

ARTICLE 13 INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Owner, Owner's officers, agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from Contractor's performance of the Work, but only to the extent caused in whole or in part by the intentional or negligent acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such 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 herein.

13.2 Contractor's Insurance

- (1) Contractor shall not commence any construction work in connection with the Project Agreement until Contractor has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on subcontractors 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 - Contractor shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all Contractor's employees connected with the work of any Project governed by this Master Agreement and, in case any work is subcontracted, 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 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, 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 - Contractor shall take out and maintain during the life of this Agreement, Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect Contractor 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 Contractor or by anyone directly or indirectly employed by Contractor, and the amount of such insurance shall be minimum limits as follows:
- | | |
|---|--|
| (a) Contractor's Comprehensive General Liability Coverages, Bodily Injury & Property Damage | \$1,000,000 Each Occurrence, Combined Single Limit |
| (b) Automobile Liability Coverages, Bodily Injury & Property Damage | \$1,000,000 Each Occurrence, Combined Single Limit |
| (c) Excess Liability, Umbrella Form | \$1,000,000 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 - Contractor shall require each of Contractor's subcontractors to procure and maintain during the life of the subcontract, insurance of the type specified above or insure the activities of Contractor's subcontractors in Contractor's policy, as specified above.
- (5) Owner's and Contractor's Protective Liability Insurance - 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 - 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 Coverages - Contractor's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- (8) Contractual Liability Work Contracts - Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect Contractor for contractual liabilities assumed by Contractor in the performance of this Agreement.
- (9) Builder's Risk Coverage - Contractor shall take out and maintain during the life of the Project Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.
- (10) 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 Owner. This Certificate shall be dated and show:

- a. The name of the insured Contractor, the specific job by name and job number, the Name of the insurer, the number of the policy, its effective date, and its termination date.
- b. 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.
- c. Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section.

13.3 Waiver of Subrogation

- (1) The Owner and Contractor waive all rights against each other, for damages caused by perils covered by property insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Contractor as trustees. Contractor shall require similar waivers from all subcontractors and their sub-subcontractors.
- (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. Contractor shall require similar waivers from all subcontractors and their sub-subcontractors.
- (3) The Owner waives subrogation against Contractor on all property and consequential loss policy carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- (4) If the policies of insurance referred to in this Article require an endorsement to provide continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

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

14.1 Termination by Contractor - If the Project is stopped for a period of sixty (60) 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 Contractor, then Contractor may, upon seven days written notice to the Owner, request payment for all work executed, Contractor's fees earned to the date the Project was stopped, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery.

14.2 Owner's Right to Perform Contractor's Obligations and Termination by Owner for Cause -

- (1) If Contractor fails to perform any of Contractor's obligations under this Agreement or any Project Agreement, including any obligation Contractor assumes to perform work with Contractor's own forces, the Owner may, after seven (7) days written notice during which period Contractor 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 Contractor's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) If Contractor 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 thirty (30) days or more behind schedule) which has been adopted by the Construction Team, or if Contractor fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of this Agreement or the Project Agreement, then the

Owner may, without prejudice to any right or remedy and after giving Contractor and Contractor's surety, if any, seven (7) days written notice, during which period Contractor fails to cure the violation, terminate the Project Agreement and Master Agreement and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor, and may finish the Project by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Project is finished nor shall Contractor be relieved from Contractor's obligations assumed herein. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing Contractor (excluding monies owed Contractor for subcontract work).

- (3) The Contractor shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Owner in conjunction with this Agreement. If 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 Contractor in conjunction with this Agreement or the Project Agreement, then the Owner may, without prejudice to any right or remedy and after giving Contractor and Contractor's surety, if any, seven (7) days written notice, during which period Contractor still fails to allow access, terminate the Project Agreement and Master Agreement and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by Contractor, and may finish the project by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Project is finished nor shall Contractor be relieved from Contractor's obligations assumed herein. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing Contractor (excluding monies owed Contractor for subcontract work).

14.3 Termination by Owner Without Cause

- (1) If the Owner terminates this Agreement or any Project Agreement other than pursuant to Article 14.2 or Article 14.3(2), Owner shall reimburse Contractor for any unpaid Cost of the Project due Contractor under any Project Agreement in effect, plus that part of the unpaid balance of the Construction Phase Fee in an amount equal to the Construction Phase Fee multiplied times the percentage of the construction project completed. The percentage shall be determined by the project team. The Owner shall also pay to Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that Contractor has previously undertaken or incurred in good faith in connection with the Project. Contractor shall, as a condition of receiving the payments referred to herein, execute and deliver all such papers and take all such steps including the legal assignment of Contractor's contractual rights, as the Owner may require for the purpose of fully vesting in Owner the rights and benefits of Contractor 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 funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate the Project Agreement and pay Contractor its proportionate fee due in accordance with the Project Agreement plus any costs incurred as allowed herein.

ARTICLE 15 ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor Contractor shall assign its interest in this Agreement without the written consent of the other, which consent may be withheld for any reason, except as to the assignment of proceeds.

ARTICLE 16 NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

- 16.1 The Owner's liability to Contractor for any claims arising out of or related to the subject matter of this Agreement or any Project Agreement, 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) Contractor must submit a Notice of Claim to Owner and to the Architect-Engineer within 20 days of when Contractor 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, Contractor 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.

Contractor agrees that the Owner shall not be liable for any claim that Contractor fails to submit as a Request for Change Order as provided in this paragraph.

- 16.2 Within ten days after receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to Contractor its written determination of the claim.
- 16.3 For work Contractor performs with its own forces, and in addition to the adjustments provided for in the Project Agreement, Contractor's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, Contractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus 5% for profit. Contractor expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17 MISCELLANEOUS

- 17.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Florida Statutes.
- 17.2 Harmony - Contractor is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Contractor and its subcontractors for work on any project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the project.

Contractor further agrees that this provision will be included in all subcontracts of the subcontractors as well as Contractor'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.
- 17.3 Apprentices - If Contractor employs apprentices on the project, the behavior of Contractor 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. Contractor will include a provision similar to the foregoing sentence in each subcontract.
- 17.4 Invoices Submitted Under Article 9 - Invoices submitted shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- 17.5 Contractor's Project Records - Contractor's Project Records shall be maintained as prescribed hereinabove for the minimum period required by State and/or Federal Law, and shall be made available to the Owner or his authorized representative at mutually convenient times.
- 17.6 Contractor's Payment Rights Contractor providing goods and services to the Owner should be aware of the following time frames. The Owner has thirty (30) days to inspect and approve the goods and services provided from the date of receipt of Contractor's pay request, and process pay requests for payment. Pay Requests which have to be returned to a Contractor because of

Contractor preparation errors will result in a delay in the payment. The Pay Requests payment requirements do not start until a properly completed Pay Request is provided to the Owner.

- 17.7 This Agreement shall be governed by and construed in accordance with laws of the State of Florida and the parties agree to submit to personal jurisdiction and venue in the Nineteenth Judicial Circuit of Florida, St. Lucie County, and in the event of federal jurisdiction, in the United States District court, Southern District of Florida.
- 17.8 No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- 17.9 If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs and including, without limitation, all such fees, costs and expenses incident to appeals, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
- 17.10 The Owner and Contractor each binds itself and its successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party.
- 17.11 Any notice, request, demand, consent, approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served (as elected by the party giving such notice) by any of the following methods:
 - (i) Hand delivery to the other party; or
 - (ii) Delivery by commercial overnight courier service; or
 - (iii) Mailed by registered or certified mail (postage prepaid), return receipt requested.

For purposes of notice the addresses are as follows:

Contractor:

The Morganti Group Inc.,

Owner:

Marty Sanders
Ex. Director of Facilities and Maintenance
SCHOOL BOARD OF ST. LUCIE COUNTY
327 N.W. Commerce Park Blvd.
Port St Lucie, Florida 34986

Notice given in accordance with the provisions of this Section shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered if mailed.

- 17.12 The Owner is exempt from payment of Florida State sales and Use Taxes. If requested, the Owner will sign an exemption certificate submitted by Contractor. Contractor shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Owner, nor is Contractor authorized to use the Owner's Tax Exemption Number in securing such materials.
- 17.13 Contractor shall be responsible for payment of all federal, state, and local taxes and fees.
- 17.14 Contractor shall not pledge the Owner's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

- 17.15 Contractor is and shall be an independent contractor in the performance of all work, services, and activities under this Agreement and is not an employee, agent or servant of the Owner. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to Contractor's sole direction, supervision and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work and in all respects Contractor's relationship and the relationship of its employees to the Owner shall be that of an independent contractor and not as employees or agents of the Owner.
- 17.16 Contractor does not have the power or authority to bind the Owner in any promise, agreement or representation other than such power or authority which is specifically provided for in this Agreement.
- 17.17 Contractor warrants and agrees that it shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, or disability (except where based on a bona fide occupational qualification), or because of marital status, race, color, religion, national origin, or ancestry.
- 17.18 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the formality and of equal dignity herewith.
- 17.19 Contractor hereby represents and warrants that it shall at all times during the term of this Agreement fully comply with all federal, state, and local licensing and registration requirements and that it will at all times conduct its professional and business activities in a reputable manner.
- 17.20 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 17.21 Captions in this Agreement are included for convenience only and are not to be considered in any construction or interpretation of this Agreement or any of its provisions.
- 17.22 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement which has been drafted by counsel for both the Owner and Contractor.
- 17.23 The contractor agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes. The Contractor, all employees of the Contractor, and all other individuals acting by or on behalf of the Contractor, who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of Owner funds shall, prior to providing any services under this Agreement, (i) file a complete set of fingerprints, (ii) submit to a drug screen, and (iii) receive clearance from the criminal background check and drug screening, all in the same manner as required of Owner employees whose positions involve direct contact with students. Contractor shall be solely responsible for the cost of compliance with the background check requirements herein. Verification of compliance with these requirements shall be provided to the Contract Manager for the Owner designated in paragraph 17.11 above. The parties agree that the failure of the Contractor to perform any of the duties described in this paragraph shall constitute a material breach of the Agreement, entitling the Owner to terminate immediately with no further responsibilities or duties to perform under this Agreement. The Contractor agrees to indemnify and hold harmless the Owner, its officers

and employees from any liability in the form of physical or mental injury, death, or property damage resulting in the Contractor's failure to comply with the requirements of this paragraph. Contractor agrees that neither the Contractor, nor any employee agent or representative of the Contractor who has been convicted or who is currently under investigation for a crime delineated in Section 435.04, Florida Statutes will be employed in the performance of this Agreement.

ARTICLE 18
TERM

The term of this Agreement shall be for one (1) year from the date of signature by the Owner and the Contractor. The Owner shall have the exclusive right to renew this Agreement annually for a period not to exceed two (2) years.

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

The Morganti Group Inc.

Attest:

APPROVED:

By _____
Corporate Secretary

By _____

As Witnessed:

By _____

(Corporate Seal)

ST. LUCIE DISTRICT SCHOOLS

APPROVED:

APPROVED:

By _____
Michael Lannon, Superintendent
St. Lucie District Schools

By _____
Debbie Hawley, Board Chairperson
St. Lucie District Schools

Approved As To Form And Legality:

By _____
Daniel B. Harrell, Esquire
School Board Attorney