

PROGRAM MANAGEMENT AGREEMENT

BETWEEN

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA

AND

PM FIRM

CONTRACT NO.

DATE _____

PROGRAM MANAGEMENT AGREEMENT

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PROGRAM MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20____, by and between The School Board of Orange County, Florida, a body corporate existing under the laws of the State of Florida (hereinafter referred to as the "OWNER"), and _____ authorized to do business in the State of Florida, whose business address is _____, (hereinafter referred to as the "PROGRAM MANAGER").

WITNESSETH:

WHEREAS, OWNER wishes to retain the services of a professional program manager to assist OWNER in administering and managing OWNER'S multi-site facility program consisting of various maintenance, remodeling, renovation, addition and new construction projects (collectively referred to as the "Program"); and

WHEREAS, Section 255.103, Florida Statutes, makes provisions for a contract with a firm to provide professional program management services to a school board; and

WHEREAS, OWNER has selected PROGRAM MANAGER, in accordance with the provisions of the Florida Statutes, and PROGRAM MANAGER has agreed to provide the professional program management services, in accordance with the terms of this Agreement, for such projects and tasks (each such project or task being referred to herein as a "Project"), as may be required and directed from time to time by OWNER, in connection with the Program.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1 - PROGRAM MANAGER'S Responsibility

1.1 From time to time upon the written request and direction of OWNER as hereinafter provided, PROGRAM MANAGER shall provide to OWNER professional program management services (hereinafter the "Services") as herein set forth with respect to the Program. All Services to be provided by PROGRAM MANAGER pursuant to this Agreement shall be in conformance with the scope of services described in the applicable Work Authorization issued pursuant to the procedures set forth herein. The form of the Work Authorization is set forth in attached Schedule A. Any deviation from the scope of services set forth in the Work Authorization must be brought to OWNER'S attention in writing by PROGRAM MANAGER and all such deviations must be expressly approved by OWNER in writing. In the event any party hereto discovers a conflict in terms between a Work Authorization and this Agreement, such conflict promptly shall be brought to the attention of the other party and OWNER shall resolve such conflict, having the right, at its election, to require PROGRAM MANAGER to perform in accordance with the more stringent interpretation or provision.

1.1.1 All Services must be authorized in writing in advance by OWNER in the form of a Work Authorization. PROGRAM MANAGER shall not provide any Services to OWNER unless and to the extent they are required and

approved by OWNER in a written Work Authorization. Any Services provided by PROGRAM MANAGER without a written Work Authorization shall be at PROGRAM MANAGER'S own risk and OWNER shall have no liability for the performance or payment of such Services.

- 1.1.2 As OWNER identifies certain Services it wishes PROGRAM MANAGER to provide pursuant to the terms of this Agreement, OWNER shall request a proposal from PROGRAM MANAGER for such Services, said proposal to be in compliance with the terms of this Agreement. If the parties reach an agreement with respect to such Services, including, but not limited to the scope of those Services and the compensation to be paid for such Services, a Work Authorization shall be prepared which incorporates the terms of the understanding reached by the parties with respect to such Services and, if both parties are in agreement therewith, they shall jointly execute the Work Authorization.
- 1.1.3 Upon execution of a Work Authorization as aforesaid, PROGRAM MANAGER agrees to promptly provide the Services required thereby, in accordance with the terms of this Agreement and the subject Work Authorization.
- 1.1.4 It is mutually understood and agreed that the nature, amount and frequency of the Services shall be determined solely by OWNER and that OWNER does not represent or guarantee unto PROGRAM MANAGER that any specific amount of Services will be requested or required of PROGRAM MANAGER pursuant to this Agreement. Further, OWNER reserves the right to have any or all of the program management services associated with the Program provided by either OWNER'S staff or other firms or individuals.
- 1.1.5 Except to the extent as may be expressly authorized by OWNER in writing hereafter, PROGRAM MANAGER shall have no authority to act as the agent of OWNER under this Agreement or to obligate OWNER in any manner or way.
- 1.1.6 If authorized in the applicable Work Authorization, PROGRAM MANAGER shall hold the design and/or construction contracts associated with any particular Project within the Program.
- 1.1.7 All duly executed Work Authorizations are hereby incorporated into and made a part of this Agreement by reference.

- 1.2 PROGRAM MANAGER agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida and in Orange County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the Services to be provided and performed by or for PROGRAM MANAGER pursuant to this Agreement.

- 1.3 PROGRAM MANAGER agrees that, when the Services to be provided hereunder relate to a professional service or construction contracting which, under Florida Statutes, requires a license, registration, certificate of authorization or some other form of legal entitlement to practice or provide such Services, PROGRAM MANAGER shall be responsible for ensuring that the person or entity providing such Services (whether it be the PROGRAM MANAGER or its subconsultant or subcontractor) shall hold and possess such valid and current legal entitlement and shall employ and/or retain only qualified personnel to provide such Services.
- 1.4 PROGRAM MANAGER hereby designates _____ as its Principal in Charge (hereinafter referred to as the "Principal in Charge"), with full authority to bind and obligate PROGRAM MANAGER on all matters arising out of or relating to this Agreement. For each Work Authorization PROGRAM MANAGER will designate in writing an individual to serve as PROGRAM MANAGER'S representative (hereinafter-referred to as the "Representative"). The Representative is authorized and responsible to act on behalf of PROGRAM MANAGER with respect to directing, coordinating and administering all aspects of the Services to be provided and performed under the subject Work Authorization. By execution of this Agreement, PROGRAM MANAGER acknowledges that each Representative has full authority to bind and obligate PROGRAM MANAGER on all matters arising out of or relating to their respective Work Authorizations. PROGRAM MANAGER agrees that the Principal in Charge and the Representatives shall devote whatever time is required to satisfactorily manage the Services to be provided and performed by PROGRAM MANAGER under the Work Authorizations. Further, PROGRAM MANAGER agrees that the Principal in Charge and the Representatives shall not be removed or replaced by PROGRAM MANAGER without OWNER'S prior approval, which approval shall not be unreasonably withheld by OWNER.
- 1.5 PROGRAM MANAGER agrees that its senior staff, staff, subconsultants and subcontractors who will perform any portion of the Services required under this Agreement are subject to OWNER'S prior approval, which approval shall not be unreasonably withheld. Further, attached to each Work Authorization shall be a listing of PROGRAM MANAGER'S senior staff, staff, subconsultants and subcontractors who PROGRAM MANAGER shall be using to provide the Services required under the subject Work Authorization ("Staffing List"). None of those senior staff, staff, subconsultants and subcontractors identified in the Staffing List may be removed or replaced by PROGRAM MANAGER without OWNER'S prior written approval, which approval shall not be unreasonably withheld. In the event that the Staffing List needs to be revised or updated, PROGRAM MANAGER shall submit a written request in the form of a letter ("Request Letter") to OWNER identifying the requested revision or modification to the Staffing List for a specific Work Authorization. OWNER shall evidence its approval or rejection of such requested revision by marking either "Approved" or "Rejected" on the Request Letter and returning the same to PROGRAM MANAGER. PROGRAM MANAGER further agrees, within fourteen (14) calendar days of receipt of a written request from OWNER, to promptly remove and replace any Representative, or any other personnel employed or retained by PROGRAM MANAGER, or any subconsultants or subcontractors or any personnel of any such subconsultants or subcontractors engaged by PROGRAM MANAGER to provide and perform any of the Services pursuant to the

requirements of this Agreement, whom OWNER shall request in writing to be removed, which request may be made by OWNER with or without cause. If PROGRAM MANAGER is required to remove and replace a subconsultant or subcontractor without cause, an equitable adjustment may be made to the compensation provided for in any Work Authorization to which such subcontractor or subconsultant may have been assigned.

- 1.6 PROGRAM MANAGER represents to OWNER that it has special expertise in the type of professional program management services that will be required under this Agreement and the OWNER is relying upon this representation in issuing Work Authorizations under this Agreement. PROGRAM MANAGER agrees that all Services to be provided by PROGRAM MANAGER pursuant to this Agreement shall be (i) subject to OWNER'S reasonable review and approval and (ii) in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over either the subject Project or the Services to be provided or performed by PROGRAM MANAGER hereunder. Further, PROGRAM MANAGER acknowledges and agrees that all Services to be provided by it pursuant to this Agreement shall conform with all policies and procedures which may be adopted from time to time by OWNER with respect to the operation of OWNER'S Facilities Services Department. Also, PROGRAM MANAGER acknowledges and agrees that it will perform all Services in accordance with the Best Financial Management Practices as prepared and issued by the Florida Legislature Office of Program Analysis and Government Accountability. Finally, PROGRAM MANAGER shall manage all Projects assigned to it to ensure the Projects conform and comply with all budgetary, size and scope restrictions and requirements established by the State of Florida and any of its agencies. OWNER'S approval of any work product produced by or for PROGRAM MANAGER shall not relieve PROGRAM MANAGER of its obligations above or to deliver complete and accurate work product necessary for the successful completion of any subject Project pursuant to the terms of the applicable Work Authorization. In the event of any conflicts in these requirements, PROGRAM MANAGER shall promptly notify OWNER of such conflict in writing and utilize its best professional judgment to assist in the resolution of the conflict.
- 1.7 PROGRAM MANAGER agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER'S prior written consent, or unless incident to the proper performance of PROGRAM MANAGER'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the Services to be rendered by PROGRAM MANAGER hereunder, and PROGRAM MANAGER shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.
- 1.8 PROGRAM MANAGER shall cooperate with OWNER'S various employees, agents, consultants and contractors with respect to the development and implementation of the Program and each Project authorized by OWNER there under. Said cooperation shall include coordinating the activities of OWNER'S various employees, agents, consultants and contractors on any particular Project, as directed and required by OWNER in the applicable Work Authorization.

- 1.9 On a monthly basis, or as otherwise required by OWNER, the Principal in Charge, PROGRAM MANAGER'S Program Executive and such other PROGRAM MANAGER officers and senior staff as may be designated by OWNER, shall meet with OWNER'S Superintendent or designee and senior staff to discuss and review the status of the Program and PROGRAM MANAGER'S performance under this Agreement.
- 1.11 In performing constructability reviews, value engineering or any other reviews involving the drawings and/or specifications for a particular Project under the Program, it is acknowledged and agreed that PROGRAM MANAGER does not undertake to perform any design work with respect to such drawings and/or specifications, design responsibility remaining solely with the Architect or Engineer responsible for such design, unless PROGRAM MANAGER is holding the contract of the Architect or Engineer responsible for such design or as otherwise may be expressly provided for in the subject Work Authorization. Further, PROGRAM MANAGER shall not assume responsibility for construction means, methods or techniques, including construction site safety, all of which shall remain the sole responsibility of the Construction Contractor, unless PROGRAM MANAGER is holding the contract of the Construction Contractor or as otherwise may be expressly provided for in the subject Work Authorization. Provided, however, nothing in this paragraph 1.11 shall relieve PROGRAM MANAGER of its responsibility to promptly report in writing to OWNER any defects or deficiencies it becomes aware of with respect to the performance of any Architect, Engineer or Construction Contractor associated with the Program.

ARTICLE 2. - OWNER'S RESPONSIBILITIES

- 2.1 For each Work Authorization, OWNER shall designate in writing a project coordinator to act as OWNER'S representative with respect to the Services to be rendered under that Work Authorization (hereinafter referred to as the "Program Director"). The Program Director shall have authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to PROGRAM MANAGER'S Services under the subject Work Authorization. However, except as may be otherwise expressly authorized in writing by OWNER, and except as specified below in this paragraph, neither the Program Director nor any other party is authorized on behalf of OWNER to issue any verbal or written orders or instructions to PROGRAM MANAGER that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of Services to be provided and performed by PROGRAM MANAGER as set forth in the subject Work Authorization; (2) the time PROGRAM MANAGER is obligated to complete all such Services as set forth in the subject Work Authorization or in the applicable Schedule submitted and approved pursuant to this Agreement with respect to such Services; or (3) the amount of compensation OWNER is obligated or committed to pay PROGRAM MANAGER as set forth in the subject Work Authorization. Notwithstanding the foregoing, the Superintendent of Orange County Public Schools, or his/her designee who is authorized in writing, may approve Additional Services in addition to those specified in the Work Authorization up to a maximum not to exceed amount of \$25,000.00. The Program

Director shall review and make appropriate recommendations on all requests submitted by PROGRAM MANAGER for payment for Services and work provided and performed in accordance with this Agreement. Further, notwithstanding anything herein to the contrary, the Superintendent of Orange County Public Schools shall have the authority to approve and execute on behalf of OWNER any amendment to this Agreement or Work Authorization issued pursuant to the terms of this Agreement in accordance with the limits established in writing from time to time by OWNER.

- 2.2 OWNER shall provide, if available, information requested by PROGRAM Manager as to OWNER'S requirements for the Services specified in a particular Work Authorization, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations, which may affect the scope of those Services.
- 2.3 Upon request from PROGRAM MANAGER, OWNER will assist PROGRAM MANAGER by making available to PROGRAM MANAGER all reasonably available information in OWNER'S possession pertinent to the Services specified in a particular Work Authorization, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction set forth in that Work Authorization.
- 2.4 OWNER shall arrange for access to and make all provisions for PROGRAM MANAGER to enter the site set forth in the Work Authorization (if any) to perform the Services to be provided by PROGRAM MANAGER with respect to such Work Authorization. PROGRAM MANAGER acknowledges that such access may be provided during times that are not the normal business hours of PROGRAM MANAGER.
- 2.5 OWNER shall provide notice to PROGRAM MANAGER of any deficiencies or defects discovered by OWNER with respect to any Services rendered by PROGRAM MANAGER hereunder.
- 2.6 Wherever the terms of this Agreement refer to some action, consent, or approval (excluding approvals of Work Authorizations, Additional Services or modifications to this Agreement or any Work Authorization) to be provided by OWNER or some notice, report or document is to be provided to OWNER, such reference to "OWNER" shall mean OWNER, OWNER'S staff, or OWNER'S designee, unless otherwise stated.

ARTICLE 3. - TIME

- 3.1 Prior to or within ten (10) days of receiving a written Work Authorization by OWNER to perform Services hereunder for a particular Project, PROGRAM MANAGER agrees to submit to and establish with OWNER a computer generated bar graph time schedule ("Schedule") for the performance of such Services, same to be based on the scope of Services to be provided with respect to the Project. Said Schedule shall be of a form and content satisfactory to OWNER. Services to be rendered by PROGRAM MANAGER shall be commenced, performed and completed in accordance with the Work Authorization and the Schedule. Time is of the essence with respect to the performance of this Agreement.

3.2 Should PROGRAM MANAGER be obstructed or delayed in the prosecution or completion of Services required hereunder as a result of unforeseeable causes beyond the control of PROGRAM MANAGER, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then PROGRAM MANAGER shall notify OWNER in writing within three (3) business days (unless OWNER expressly agrees in writing to a longer period of time) after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which PROGRAM MANAGER may have had to request a time extension.

3.2.1 The term "business day" shall mean all days of the week excluding Saturdays and Sundays and all legal holidays observed by OWNER.

3.3 Unless otherwise expressly provided for in the Work Authorization, no interruption, interference, inefficiency, suspension or delay in the commencement or progress of PROGRAM MANAGER'S Services from any cause whatsoever, including those OWNER may be responsible in whole or in part, shall relieve PROGRAM MANAGER of its duty to perform or give rise to any right to damages or additional compensation from OWNER. PROGRAM MANAGER expressly acknowledges and agrees that it shall receive no damages for delay. PROGRAM MANAGER'S sole remedy, if any, against OWNER will be the right to seek an extension of time to its Schedule; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Notwithstanding the foregoing, the parties acknowledge and agree that the terms of this paragraph 3.3 shall not preclude PROGRAM MANAGER from being compensated as otherwise provided in this Agreement and the applicable Work Authorization during the pendency of any delay to the extent the delay is not due to the fault or neglect of PROGRAM MANAGER.

3.4 Should PROGRAM MANAGER fail to commence, provide, perform or complete any of the Services to be provided hereunder in a timely and diligent manner, in addition to any other rights or remedies available to OWNER hereunder, OWNER at its sole discretion and option may withhold any and all payments due and owing to PROGRAM MANAGER until such time as PROGRAM MANAGER resumes performance of its obligations hereunder in such a manner so as to establish to OWNER'S satisfaction that PROGRAM MANAGER'S performance is or will shortly be back on schedule.

3.5 Notwithstanding anything herein to the contrary, this Contract shall have an initial term of one (1) year from the date it is executed by both Owner and Program Manager; provided, however, the term of this Contract automatically shall renew for up to four (4) additional consecutive one year periods, unless either party hereto elects not to renew this Contract by sending the other party written notice thereof at least thirty (30) days prior to the annual anniversary date of this Contract ("Non-renewal Notice"). If this Contract has been so renewed, and prior to the expiration of the fifth (5th) term year Owner has determined in its sole discretion that further extension of this Contract is in its best interest, Owner may notify Program Manager in writing that it has elected to extend the

term of this Contract for up to an additional two (2) years ("Extension Notice"). The same process as noted above for the initial five (5) year term shall be applied to the additional two (2) year term. Namely, after the Extension Notice has been sent, the Contract shall be automatically renewed for an additional one (1) year term at the expiration of the fifth (5th) term year, and thereafter the Contract shall be automatically renewed for an additional one (1) year period, up to a maximum of two (2) additional consecutive one year periods, unless either party hereto elects not to renew this Contract by timely sending the other party the required Non-renewal Notice. Accordingly, the maximum term for this Contract in no event shall exceed seven (7) years. In the event Program Manager sends the Non-renewal Notice to Owner, thereafter no new Work Authorizations shall be issued under this Contract, but Program Manager shall be obligated to complete all Work Authorizations issued prior to such Non-renewal Notice, subject to the other terms and conditions of this Contract, including, but not limited to, Owner's right to terminate any or all such Work Authorizations for cause or its convenience. In the event Owner sends Program Manager the written Non-renewal Notice, Owner shall designate therein as to how any pending Work under any still outstanding Work Authorizations are to be handled, which directions may provide for either the termination or continued performance of such Work. If Owner directs Program Manager to continue to perform any such Work, Program Manager shall continue performance of such Work in accordance with Owner's directions and this Agreement shall continue as to such Work.

ARTICLE 4. - COMPENSATION

- 4.1 PROGRAM MANAGER agrees to furnish to OWNER, after the end of each calendar month, or as otherwise specified in the Work Authorization, a comprehensive and itemized invoice containing a statement of charges, together with such backup and detail as reasonably may be required by OWNER (including appropriate releases), for (a) the Services performed and rendered by PROGRAM MANAGER during that time period pursuant to any applicable Work Authorization, and (b) any OWNER authorized reimbursable expenses as herein below defined, incurred and/or paid by PROGRAM MANAGER during that time period (hereinafter referred to, individually, as an "Invoice" or, collectively, as the "Invoices").
- 4.2 The form and content of each Invoice shall be in accordance with the requirements of the Agreement and OWNER, including, but not limited to, all applicable procedures and requirements of OWNER, including, but not limited to, those set forth in Schedule E hereto ("Guidelines") which Guidelines may be amended from time to time as OWNER may determine necessary. OWNER shall give notice of such amendments to PROGRAM MANAGER.
- 4.3 OWNER shall make payment on that portion of each Invoice which it approves within forty-five (45) days from the date it receives a full and complete Invoice in compliance with the requirements hereof. If OWNER fails to make payment of said approved amount within that forty-five (45) day period, PROGRAM MANAGER shall send OWNER written notice of such failure, stating the amount PROGRAM MANAGER believes to be outstanding and the due date therefor ("Late Notice"). If OWNER

thereafter fails to make payment of the approved amount within thirty (30) days of the date it receives the Late Notice, OWNER shall be obligated to pay interest at the rate of twelve percent (12%) per annum on any such outstanding amounts. All such interest shall not begin to accrue until thirty (30) days after the date OWNER receives the Late Notice.:

- 4.4 If the Services to be performed pursuant to any particular Work Authorization will be provided by PROGRAM MANAGER'S personnel and the compensation contained in such Work Authorization is to be based upon the time reasonably expended by PROGRAM MANAGER's personnel, then such compensation shall be based on the salary rates set forth and identified in that Work Authorization. Unless otherwise specifically noted in the Work Authorization, PROGRAM MANAGER shall not bill OWNER more than 40 hours per week nor 1,960 hours per year for any salaried employee.
- 4.5 OWNER agrees to reimburse PROGRAM MANAGER for all necessary and reasonable reimbursable expenses incurred or paid by PROGRAM MANAGER in connection with PROGRAM MANAGER'S performance of the Services on a particular Project, at its direct cost with no markup, to the extent such reimbursement is permitted in the subject Work Authorization. For the purposes hereof, the term "reimbursable expenses" shall be deemed to include only the following items, unless otherwise noted in the applicable Work Authorization:
 - 4.5.1 All necessary fees paid by PROGRAM MANAGER to governmental authorities, having jurisdiction over any Project specified in a Work Authorization, for securing required approval of the Project or any part of it.
 - 4.5.2 Travel expenses incurred or paid by PROGRAM MANAGER for necessary travel by any principal or employee of PROGRAM MANAGER outside of Orange County, Florida, in connection with the performance of the Services. Such travel expenses are to be limited to the amounts established by Florida law. PROGRAM MANAGER shall not be entitled to reimbursement for travel within Orange County, Florida or relocation of personnel.
 - 4.5.3 The direct cost to PROGRAM MANAGER for copying/ reproduction of plans and other documents required in connection with any Project specified in the Work Authorization.
 - 4.5.4 PROGRAM MANAGER shall obtain the prior written approval of OWNER before incurring any of the aforesaid reimbursable expenses, and absent such prior approval, no expenses incurred by PROGRAM MANAGER will be deemed to be a reimbursable expense.
- 4.6 PROGRAM MANAGER shall bear and pay all overhead and other expenses, except for the reimbursable expenses specified and defined above, incurred by PROGRAM MANAGER in the performance of the Services.

- 4.7 Prior to authorizing PROGRAM MANAGER to provide any Services or to incur any reimbursable expenses under a Work Authorization pursuant to this Agreement, OWNER shall request that PROGRAM MANAGER in writing advise OWNER of (i) the estimated time of PROGRAM MANAGER'S personnel and the estimated fees thereof for the proposed work to be specified in the Work Authorization; and (ii) the estimated charge to OWNER for the reimbursable expenses applicable to the contemplated Services to be performed by PROGRAM MANAGER under the proposed Work Authorization. At no cost to OWNER, PROGRAM MANAGER shall promptly supply such estimate to OWNER based on PROGRAM MANAGER'S good faith analysis
- 4.8 PROGRAM MANAGER agrees that, with respect to any subconsultant or subcontractor to be utilized by PROGRAM MANAGER on any particular Work Authorization, PROGRAM MANAGER shall bill at its direct cost with no markup on the fees and expenses associated with such subconsultants and subcontractors. Further, unless otherwise agreed to in writing by OWNER, all agreements between PROGRAM MANAGER and its various subconsultants and subcontractors, with respect to the Program, shall provide that when compensation under such agreements is to be based upon hourly rates, then such rates will be subject to the same conditions and limitations as are applicable to the PROGRAM MANAGER'S rates, including the requirement that the subconsultant's or subcontractor's hourly rates be based upon their actual salaries with a multiplier no greater than that applicable to the PROGRAM MANAGER.
- 4.9 In the event PROGRAM MANAGER owes any sums to OWNER pursuant to the terms of this Agreement, and PROGRAM MANAGER fails to make payment of such amounts to OWNER within thirty days of the date it receives notice from OWNER of the same, such amounts shall bear interest at the rate of twelve percent (12%) per annum on any portions of such amounts that remain outstanding after said thirty day period.

ARTICLE 5. - OWNERSHIP OF DOCUMENTS

- 5.1 Unless otherwise expressly stated in the applicable Work Authorization, the Services to be provided under the subject Work Authorization shall be deemed not to involve the reuse of a design owned by PROGRAM MANAGER, as provided for in paragraph 5.2 below, and upon the completion or termination of each such Work Authorization, as directed by OWNER, PROGRAM MANAGER shall deliver to OWNER copies or originals of all records, documents, drawings, notes, tracings, plans, Auto CADD files, specifications, maps, evaluations, reports, analysis and other technical data, other than working papers, prepared or developed by PROGRAM MANAGER under this Agreement. OWNER shall specify whether the originals or copies of such documents and materials are to be delivered by PROGRAM MANAGER. PROGRAM MANAGER shall be solely responsible for all costs associated with delivering to OWNER such documents and records. PROGRAM MANAGER, at its own expense, may retain copies for its files and internal use. Upon payment by OWNER to PROGRAM MANAGER as required under the subject Work Authorization, the before mentioned records, documents, tracings, plans, specifications, maps, evaluations, reports, analysis and other

technical data shall become the property of OWNER. Any Project designed by PROGRAM MANAGER under such a Work Authorization issued pursuant to this Agreement may be reused or repeated by OWNER at OWNER'S option and discretion at any time or times, including but not limited to, completion of the Project following termination of PROGRAM MANAGER, future additions or remodeling of the subject Project and/or the development of other Projects. PROGRAM MANAGER hereby grants its consent to the reuse of such Work Authorization documents by OWNER for such purposes. OWNER agrees to indemnify and hold harmless PROGRAM MANAGER with respect to any direct damages actually incurred by PROGRAM MANAGER due to OWNER'S use of said records, documents, tracings, plans, specifications, maps, evaluations, reports, analysis and other technical data on some other Project. However, OWNER shall not be liable for any indirect or consequential damages which may be incurred by PROGRAM MANAGER due to OWNER'S use of said records.

- 5.2 If the Services required under a particular Work Authorization involve the reuse of an existing design owned by PROGRAM MANAGER, as expressly set forth and acknowledged in that Work Authorization, OWNER agrees that the plans, specifications, designs, drawings, notes and other documents used by PROGRAM MANAGER for that Work Authorization shall remain the property of PROGRAM MANAGER. Nevertheless, without requiring OWNER to pay any additional fees, PROGRAM MANAGER consents to OWNER'S use of those plans, specifications, designs, drawings, notes, and other documents to complete the Project designated under the applicable Work Authorization following PROGRAM MANAGER'S termination for any reason or for the purpose of performing any additions to or remodeling of that Project. Additionally, PROGRAM MANAGER agrees to make available to OWNER all plans, specifications, designs, drawings, notes, and other documents used by PROGRAM MANAGER under the subject Work Authorization for reuse by OWNER on other Projects. For each such reuse, OWNER agrees to pay PROGRAM MANAGER the reuse fee specified in the subject Work Authorization. PROGRAM MANAGER warrants that it owns all rights to such plans, specifications, designs, drawings, notes and other drawings and can grant OWNER permission to use those documents as set forth herein.

ARTICLE 6. - MAINTENANCE OF RECORDS

- 6.1 PROGRAM MANAGER shall keep adequate records and supporting documentation which concern or reflect its Services hereunder. The records and documentation shall be retained by PROGRAM MANAGER for a minimum of three (3) years from the date of termination of this Agreement or the date the Work Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the period noted above in which the records are to be retained; provided, however, such activity shall be conducted only during normal business hours.
- 6.2 The records specified above in paragraph 6.1 include accurate time records, which PROGRAM MANAGER agrees to keep and maintain, from day to day, showing the

time expended by each principal and employee of PROGRAM MANAGER in performing the Services and therein specifying the services performed by each, with all such time records to be kept within a maximum of thirty (30) minute intervals. At the request of OWNER, or as specified in the Work Authorization, PROGRAM MANAGER shall furnish to OWNER any of the aforesaid time records, as well as invoices or proofs showing PROGRAM MANAGER'S incurrence and/or payment of any reimbursable expenses.

ARTICLE 7. - INDEMNIFICATION

- 7.1 To the fullest extent permitted by law, PROGRAM MANAGER shall indemnify, defend and hold harmless OWNER, its board members, officers, agents and employees, from and against all claims, suits, damages, losses and expenses, including reasonable attorneys' fees and costs, attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, or to copyright or patent infringement, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the PROGRAM MANAGER (or anyone for whom PROGRAM MANAGER is liable) This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph 7.1.
- 7.2 The parties acknowledge and agree that the first \$100 of the compensation to be paid PROGRAM MANAGER hereunder is being paid as separate consideration for the indemnification obligations required of PROGRAM MANAGER pursuant to the terms of paragraph 7.1, as well as being separate consideration for any and all other indemnification obligations required of PROGRAM MANAGER under this Agreement. PROGRAM MANAGER expressly acknowledges the sufficiency of such separate consideration.

ARTICLE 8. - INSURANCE

- 8.1 During the term of this Agreement PROGRAM MANAGER shall provide, pay for, and maintain, with companies satisfactory to OWNER, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. Within two (2) weeks after the execution and delivery of this Agreement by PROGRAM MANAGER, PROGRAM MANAGER shall deliver to OWNER properly executed Certificates of Insurance, using the modified ACCORD form which is attached hereto as Schedule B, evidencing the fact that PROGRAM MANAGER has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required hereunder shall be provided to OWNER, on a timely basis, if requested by OWNER. These Certificates and policies shall contain provisions that thirty (30) days written notice by registered or certified mail shall be given OWNER of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. PROGRAM MANAGER shall also notify OWNER, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non- renewal or material change in coverages or limits received by

PROGRAM MANAGER from its insurer, and nothing contained herein shall relieve PROGRAM MANAGER of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy, PROGRAM MANAGER shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. All insurance coverages of PROGRAM MANAGER shall be primary to any insurance or self-insurance program carried by OWNER applicable to this Agreement.

8.2 All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:

8.2.1 The term "The School Board of Orange County, Florida" shall include the Orange County School Board, a body corporate, the Orange County Public School System and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of the Orange County School Board.

8.2.2 All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by PROGRAM MANAGER to meet the requirements of this Agreement shall name The School Board of Orange County, Florida, as that name is defined in subparagraph 8.2.1, above, as an additional insured as to the operations of PROGRAM MANAGER under the Contract Documents and shall contain a severability of interests provisions.

8.2.3 Companies issuing the insurance policy or policies shall have no recourse against OWNER for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of PROGRAM MANAGER.

8.2.4 All insurance coverages of PROGRAM MANAGER shall be primary to any insurance or self-insurance program carried by OWNER applicable to this Agreement, and the "Other Insurance" provisions of any policies obtained by PROGRAM MANAGER shall not apply to any insurance or self-insurance program carried by OWNER applicable to this Agreement.

8.2.5 All insurance policies shall be fully performable in Orange County, Florida, and shall be construed in accordance with the laws of the State of Florida.

8.2.6 All insurance policies to be provided by PROGRAM MANAGER pursuant to the terms hereof must expressly state that the insurance company will accept service of process in Orange County, Florida and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court situated in Orange County, Florida.

8.3 The acceptance by OWNER of any Certificate of Insurance pursuant to the terms of this Agreement evidencing the insurance coverages and limits required hereunder does not constitute approval or agreement by OWNER that the insurance requirements have been

met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.

- 8.4 Before starting and until completion of all Services required hereunder, PROGRAM MANAGER shall procure and maintain insurance of the types and to the limits specified in Schedule C, "Insurance Coverage", which is attached hereto and made a part hereof. PROGRAM MANAGER shall require each of its subconsultants and subcontractors to procure and maintain, until the completion of that subconsultant's or subcontractor's portion of the Services, insurance of the types and to the limits specified in Schedule C, unless such insurance requirement for the subconsultant or subcontractor is expressly waived in writing by OWNER.
- 8.5 If any insurance provided pursuant to this Agreement expires prior to the completion of the Services required hereunder, renewal Certificates of Insurance and, if requested by OWNER, certified, true copies of the renewal policies, shall be furnished to OWNER thirty (30) days prior to the date of expiration.
- 8.6 Should at any time PROGRAM MANAGER not maintain the insurance coverages required in this Agreement, OWNER may cancel the Agreement and any Work Authorizations issued pursuant to the Agreement or, at OWNER'S sole discretion, it shall be authorized to purchase such coverages and charge PROGRAM MANAGER for such coverages purchased. If PROGRAM MANAGER fails to reimburse OWNER for such costs within thirty (30) days after demand, OWNER has the right to offset those costs from any amount due PROGRAM MANAGER under this Agreement. OWNER shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of OWNER to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.
- 8.7 PROGRAM MANAGER, its subconsultants, subcontractors and OWNER shall waive all rights against each other for damages to their respective property covered by insurance held by any of them, to the extent proceeds from such insurance are paid to the party suffering such property damage, except such rights as they may have to the proceeds of such insurance held by any of them.
- 8.8 All insurance companies from whom PROGRAM MANAGER obtains the insurance policies required hereunder must meet the following minimum requirements:
 - 8.8.1 The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida.
 - 8.8.2 The insurance company must have been in such insurance business continuously for not less than five (5) years immediately prior to the date of execution of this Agreement.
 - 8.8.3 The insurance company must have an A. M. Best policyholder rating of either "A+", "A", or "A-".

8.8.4 The insurance company must have a current A.M. Best financial rating of "Class VI" or higher.

8.9 PROGRAM MANAGER is aware of OWNER'S Owner Controlled Insurance Program ("OCIP"). PROGRAM MANAGER shall confirm whether any particular Project assigned to it will be covered by OCIP and, if so, shall confirm and coordinate the incorporation of the most current OCIP manuals into the documents to be prepared for the subject Project. Further, PROGRAM MANAGER shall be responsible for monitoring OCIP compliance on each such Project.

8.10 To the extent OWNER is indemnified and held harmless by the express terms of a contract it has with a Construction Contractor, Architect or Engineer with respect to the Program, OWNER shall endeavor to have the PROGRAM MANAGER included in such indemnification provision as an additional indemnified party. Further, with respect to all such contracts, OWNER shall endeavor to have PROGRAM MANAGER named as an additional insured in the Comprehensive General Liability Insurance and Comprehensive or Business Automobile Liability Insurance policies to be provided by the Construction Contractor, Architect or Engineer under such contracts. OWNER shall not be required to pay any additional premium charge that may be required to have PROGRAM MANAGER named as an additional insured under any such policies.

ARTICLE 9. - SERVICES BY PROGRAM MANAGER'S OWN STAFF

9.1 The Services to be performed hereunder shall be performed by the staff, subconsultants and subcontractors identified in the subject Work Authorization, unless otherwise authorized in writing by OWNER. The employment of, contract with, or use of the services of any other person or firm by PROGRAM MANAGER, as independent consultant or otherwise, shall be subject to the prior written approval of OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against OWNER beyond such as may otherwise exist without regard to this Agreement.

ARTICLE 10. - WAIVER OF CLAIMS

10.1 PROGRAM MANAGER'S acceptance of final payment for Services provided under any Work Authorization shall constitute a full waiver of any and all claims by it against OWNER arising out of the Work Authorization or otherwise related to those Services, except those previously made in writing and identified by PROGRAM MANAGER as unsettled at the time PROGRAM MANAGER applies for such final payment. Neither the acceptance of PROGRAM MANAGER'S Services nor payment by OWNER shall be deemed to be a waiver of any of OWNER'S rights against PROGRAM MANAGER.

ARTICLE 11. - TERMINATION OR SUSPENSION

11.1 PROGRAM MANAGER shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement

and any Work Authorizations in effect, in whole or in part, as further set forth herein, if in the opinion of the OWNER any of the following reasons exists: (a) failure to begin Services under the Agreement within the times specified under the applicable Work Authorization(s), or (b) failure to properly or timely perform the Services to be provided hereunder, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by PROGRAM MANAGER or by any of PROGRAM MANAGER'S principals, partners, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) otherwise materially breaches this Agreement. OWNER may so terminate this Agreement, in whole or in part, by giving PROGRAM MANAGER seven (7) calendar days written notice.

OWNER, at its option, upon a termination of PROGRAM MANAGER'S right to proceed under the Contract, in whole or in part, may take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of PROGRAM MANAGER, and complete all or any portion of PROGRAM MANAGER's Services by whatever means, method or agency which OWNER, in its sole discretion, may choose.

If OWNER deems any of the foregoing remedies necessary, PROGRAM MANAGER agrees that it shall not be entitled to receive any further payments hereunder until after its Services have been completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by OWNER incident to such completion, shall be deducted from any unpaid sums otherwise payable to PROGRAM MANAGER, and if such expenditures exceed the unpaid sums, PROGRAM MANAGER agrees to pay promptly to OWNER on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid.

The liability of PROGRAM MANAGER hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by OWNER in good faith under the belief that such payments or assumptions were necessary or required, in completing the Services and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Services, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Services hereunder.

11.2 If, after notice of termination of this Agreement as provided for in paragraph 11.1 above, it is determined for any reason that PROGRAM MANAGER was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against PROGRAM MANAGER provided for in paragraph 11.1, then the notice of termination given pursuant to paragraph 11.1 shall be deemed to be the notice of termination provided for in paragraph 11.3 below and PROGRAM MANAGER'S remedies against OWNER shall be the same as and limited to those afforded PROGRAM MANAGER under paragraph 11.4 below.

11.3 Notwithstanding anything herein to the contrary (including the provisions of paragraph

11.1 above), OWNER shall have the right to terminate this Agreement and any Work Authorization(s) in effect, in whole or in part, without cause upon seven (7) calendar days written notice to PROGRAM MANAGER. In the event of such termination for convenience, PROGRAM MANAGER'S recovery against OWNER shall be limited to that portion of PROGRAM MANAGER'S compensation earned through the date of termination, for any Work Authorizations so cancelled, together with any retainage withheld and any costs reasonably incurred by PROGRAM MANAGER that are directly attributable to the termination, but PROGRAM MANAGER shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profit on Services not required to be performed.

- 11.4 Upon termination, PROGRAM MANAGER shall deliver to OWNER, as set forth in paragraph 5.1 herein, all papers, records, documents, Auto CADD files, drawings, calculations, models, and other materials in PROGRAM MANAGER'S possession or control arising out of or relating to this Agreement.
- 11.5 OWNER shall have the power to suspend all or any portions of the Services to be provided by PROGRAM MANAGER hereunder upon giving PROGRAM MANAGER two (2) calendar days prior written notice of such suspension. If all or any portion of the Services to be rendered hereunder are so suspended, PROGRAM MANAGER'S sole and exclusive remedy shall be to seek an extension of time to its schedule subject to the procedures set forth in Article 3 herein.

ARTICLE 12. - SECURING AGREEMENT/PUBLIC ENTITY CRIMES

- 12.1 PROGRAM MANAGER warrants that PROGRAM MANAGER has not employed or retained any company or person, other than a bona fide employee working solely for PROGRAM MANAGER, to solicit or secure this Agreement and that PROGRAM MANAGER has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for PROGRAM MANAGER, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. At the time this Agreement is executed, PROGRAM MANAGER shall sign and deliver to OWNER the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Schedule D. PROGRAM MANAGER'S compensation shall be adjusted to exclude any sums by which OWNER determines the compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- 12.2 By its execution of this Agreement, PROGRAM MANAGER acknowledges that it has been informed by OWNER of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be

awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided ins. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

ARTICLE 13. -CONFLICT OF INTEREST

13.1 PROGRAM MANAGER represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder. PROGRAM MANAGER further represents that no persons having any such interest shall be employed to perform those Services.

ARTICLE 14. -MODIFICATION

14.1 No modification or change in this Agreement or any Work Authorization issued hereunder shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE 15. -NOTICES AND ADDRESS OF RECORD

15.1 All notices required or made pursuant to this Agreement to be given by PROGRAM MANAGER to OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage pre-paid, return receipt requested, addressed to the following OWNER'S address of record Orange County Public Schools

Facilities Services
6501 Magic Way, Building 200
Orlando, Florida 32809
Attention: Program Director

15.2 All notices required or made pursuant to this Agreement to be given by OWNER to PROGRAM MANAGER shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage pre-paid, return receipt requested, addressed to the following PROGRAM MANAGER'S address of record:

PM FIRM.

Attention: _____

15.3 Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 16. -MISCELLANEOUS

16.1 No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

16.2 This Agreement is not assignable, in whole or in part, by PROGRAM MANAGER

without the prior written consent of OWNER.

- 16.3 Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.
- 16.4 The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Sections, Schedules and Attachments.
- 16.5 This Agreement, including any Addenda and referenced Schedules, Work Authorizations, and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.
- 16.6 Unless the content of the Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement should not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
- 16.7 All representations and covenants of the parties shall survive the expiration of this Agreement.
- 16.8 This Agreement maybe simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 16.9 The following Schedules are incorporated herein by reference:
 - 16.9.1 Schedule A- Work Authorization Form.
 - 16.9.2 Schedule B- Certificate of Insurance.
 - 16.9.3 Schedule C- Insurance Coverage.
 - 16.9.4 Schedule D- Truth in Negotiation Certificate.
 - 16.9.5 Schedule E- Program Management Invoice Requirements.
- 16.10 In the event any sum of money is due from one party hereunder to the other pursuant to the terms of this Agreement and such sum is not paid when due, then interest at the rate of 12% per annum shall accrue on said sum from the date it was due and payable until

the date it is paid.

- 16.11 If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 17. - APPLICABLE LAW

- 17.1 Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing Services funded by the United States government.
- 17.2 Any litigation between OWNER and PROGRAM MANAGER), whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of Florida; and Owner and Construction Contractor each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between OWNER and PROGRAM MANAGER shall lie and be only in the appropriate State courts of the State of Florida's Ninth Judicial Circuit in and for Orange County, Florida. PROGRAM MANAGER consents and submits to the jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court. OWNER and PROGRAM MANAGER EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY REGARDING ANY SUCH LITIGATION.

ARTICLE 18.-EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION/MWBE

- 18.1 In performing all Services to be provided hereunder, PROGRAM MANAGER shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. PROGRAM MANAGER shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. PROGRAM MANAGER shall post in conspicuous places, available to employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity/Nondiscrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex, or national origin. PROGRAM MANAGER shall comply with OWNER'S MWBE policy and with the MWBE representations made to OWNER during the selection process.

ARTICLE 19.-DISPUTE RESOLUTION

19.1 Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of PROGRAM MANAGER with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached during negotiations to OWNER for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of PROGRAM MANAGER with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached at mediation to OWNER for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under Florida Statutes section 44.102.

ARTICLE 20. -HAZARDOUS MATERIALS

20.1 Unless otherwise expressly provided for in a specific Work Authorization, nothing in this Agreement shall be construed or interpreted as requiring PROGRAM MANAGER to be or assume the status of an owner, operator, generator, transporter, storer or any other potentially responsible party as defined by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state or local statute, regulation, order or administrative finding for enforcement of such act or statute, governing the treatment, storage, transportation, reporting and disposal of hazardous materials. Further, unless otherwise expressly provided for in a specific Work Authorization, PROGRAM MANAGER shall have no duty to discover, handle, remove, store, transport, dispose, abate or remediate any hazardous materials as may be required in connection with a particular Project; provided, however, in the event any hazardous material is discovered by PROGRAM MANAGER, PROGRAM MANAGER immediately shall notify OWNER in writing of such discovery.

20.2 As used in this Article 20, the term "hazardous material" shall mean and include, any element, constituent, chemical, substance, compound or mixture, which is defined in or included under or regulated by any federal, state or local statute, regulation, order or administrative finding for enforcement of such statute, regulation or order pertaining to environmental regulation, contamination, cleanup or disposal, including, without limitation, the Comprehensive Environmental Response and Liability Act, the Resource Conservation and Recovery Act, the Toxic Control Act, the Clean Water Act, the Clean Air Act, the Marine Protection Research and Sanctuaries Act, the Occupational-Safety and Health Act and the Superfund Amendments and Reauthorization Act of 1986.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

OWNER:

THE SCHOOL BOARD OF ORANGE
COUNTY, FLORIDA, a body corporate

By: _____

Print Name: _____

Title: _____

Date: _____

CONSULTANT:

PM FIRM.
a Florida corporation

By: _____

Print Name: _____

Title: _____

Date: _____

SCHEDULE A

WORK AUTHORIZATION

WORK AUTHORIZATION

NO. _____

FIRM NAME: PM FIRM.

ADDRESS _____

ATTENTION: _____

SCHOOL: _____

PROJECT: _____

PURCHASE ORDER NO.: _____
(This number must be referenced on all invoices for payment to be authorized)

This Work Authorization, dated _____, 20____, is hereby issued pursuant to that Program Management Agreement (“Agreement”), dated as of _____, 20____, between The School Board of Orange County, Florida (“Owner”) and PM FIRM. (“Program Manager”).

All terms used herein shall have the same meaning as defined in the Agreement unless otherwise noted herein. In consideration of the mutual covenants and agreements set forth below, Owner and Program Manager agree as follows:

**ARTICLE 1
SCOPE OF WORK**

Owner hereby authorizes Program Manager to provide the following Services for the following Project:

**ARTICLE 2
SCHEDULE**

The Services under this Work Authorization shall commence by _____, and shall be completed by _____. A detailed Services schedule is attached.

ARTICLE 3

COMPENSATION

The compensation for the Services provided under this Work Authorization shall be paid in accordance with the procedures set forth in Article 4 of the Agreement unless otherwise expressly noted herein. The compensation to be paid Program Manager for the Services is as follows:

**ARTICLE 4
QUALIFICATIONS AND SPECIAL REQUIREMENTS**

The Services to be provided under this Work Authorization are subject to the following special requirements and qualifications:

**ARTICLE 5
MISCELLANEOUS**

All terms and conditions of the Agreement shall remain in full force and effect unless waived or modified by an express provision of this Work Authorization.

THE SCHOOL BOARD OF ORANGE
COUNTY, FLORIDA

PM FIRM.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE B

CERTIFICATE OF INSURANCE

SCHEDULE C

INSURANCE COVERAGE

The amounts and types of insurance shall conform to the minimum requirements listed below with the use of Insurance Services Office (ISO) forms and endorsements or broader where applicable. If PROGRAM MANAGER has any self-insured retentions or deductibles under any of the below listed minimum required coverages, PROGRAM MANAGER must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be PROGRAM MANAGER sole responsibility.

Worker’s Compensation and Employers Liability Insurance shall be maintained by PROGRAM MANAGER during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Workers’ Compensation - Florida Statutory Requirements

Employers Liability -	\$500,000.00	Limit Each Accident
	\$500,000.00	Limit Disease Aggregate
	\$500,000.00	Limit Disease Each Employee

The insurance company shall waive its Rights of Subrogation against OWNER.

Commercial General Liability Insurance, written on an “occurrence” basis, shall be maintained by PROGRAM MANAGER. Coverage, as provided by 1986 (or later) ISO commercial general liability form, shall include, but not be limited to, Bodily Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Personal Injury and Fire Legal Liability Coverages. If PROGRAM MANAGER provides any construction work, it must also include Products & Completed Operations, with the Completed Operations Coverage maintained for this Project for not less than five (5) years following completion and acceptance by OWNER. Limits of coverage shall not be less than the following for Bodily Injury, including Death, Property Damage and Personal Injury Combined Single Limits:

General Aggregate	\$	2,000,000.00
Products - Completed Operations Aggregate	\$	2,000,000.00
Personal and Advertising Injury	\$	1,000,000.00
Each Occurrence	\$	1,000,000.00
Fire Damage (Any One Fire)	\$	50,000.00
Medical Expenses Per Person	\$	5,000.00
Site Specific Project Aggregate Limits	\$	same as above

The aggregate limits shall be separately applicable to this Project through the use of an endorsement approved by OWNER. Applicable deductibles or self-insured retention, not to exceed \$25,000.00, shall be the sole responsibility of PROGRAM MANAGER.

Automobile Liability Insurance shall be maintained by PROGRAM MANAGER as to ownership, maintenance, and use, including loading and unloading, of all owned, non-owned, leased or hired vehicles with limits of not less than:

Bodily Injury, including Death & Property Damage Liability	\$1,000,000.00 Combined Single Limit Each Accident
--	---

Umbrella Liability Insurance or Excess Liability Insurance shall not be less than \$5,000,000.00 each occurrence and aggregate. Coverage shall be excess of the Employers Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a “following form” basis. Coverage shall drop down as primary on the exhaustion of any aggregate limit. The aggregate limits shall apply separately to this Project, and the specific project aggregate limits shall be evidenced by the use of an endorsement approved by OWNER.

Valuable Papers. PROGRAM MANAGER shall purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records utilized during the term of this Agreement.

Professional Liability Insurance shall be maintained by PROGRAM MANAGER insuring its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have limits of not less than \$3,000,000.00 each claim and aggregate, and the PROGRAM MANAGER waives its right of recovery against OWNER as to any claims under this insurance. Any deductible or self-insured retention applicable to any claim shall be the sole responsibility of PROGRAM MANAGER and shall not be greater than \$25,000.00 each claim. PROGRAM MANAGER must continue this coverage for a period of not less than five (5) years after completion of its services to OWNER. The policy retroactive date will always be prior to the date services were first performed by PROGRAM MANAGER for OWNER, and the date will not be moved forward during the term of this Agreement and for 5 years thereafter. PROGRAM MANAGER shall promptly submit Certificates of Insurance providing for an unqualified written notice to OWNER of any cancellation of coverage or reduction in limits, other than the application of the aggregate limits provision. In addition, as provided in paragraph 8.1 of this Agreement, PROGRAM MANAGER shall also notify OWNER by certified mail, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by PROGRAM MANAGER from its insurer. In the event of more than a twenty percent (20%) reduction in the aggregate limit of any policy, PROGRAM MANAGER shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. PROGRAM MANAGER shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by OWNER.

Project Professional Liability. If OWNER notifies PROGRAM MANAGER that a project professional liability policy will be purchased, then PROGRAM MANAGER agrees to use its best efforts in cooperation with OWNER and OWNER’S insurance representative, to pursue the maximum credit available from the professional liability carrier for a reduction in the premium of PROGRAM MANAGER’S professional liability policy. If no credit is available from PROGRAM MANAGER’S current professional policy underwriter, then PROGRAM

MANAGER agrees to pursue the maximum credit available on the next renewal policy, if a renewal occurs during the term of the project policy (and on any subsequent professional liability policies that renew during the term of the project policy). PROGRAM MANAGER agrees that any such credit will fully accrue to OWNER. Should no credit accrue to OWNER, OWNER and PROGRAM MANAGER, agree to negotiate in good faith a credit on behalf of OWNER for the provision of project-specific professional liability insurance policy in consideration for a reduction in PROGRAM MANAGER'S self-insured retention and the risk of uninsured or underinsured consultants.

PROGRAM MANAGER agrees to provide the following information when requested by OWNER or OWNER'S Project Manager:

1. The date the professional liability insurance renews.
2. Current policy limits.
3. Current deductibles/self-insured retention.
4. Current underwriter.
5. Amount (in both dollars and percent) the underwriter will give as a credit if the policy is replaced by an individual project policy.
6. Cost of professional insurance as a percent of revenue.
7. Affirmation that the design firm will complete a timely project errors and omissions application.

If OWNER elects to purchase a project professional liability policy, PROGRAM MANAGER to be insured will be notified and OWNER will provide professional liability insurance, naming PROGRAM MANAGER and its professional subconsultants as named insureds.

EXHIBIT D

TRUTH-IN-NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, PM FIRM hereby certifies that wage rates and other factual unit costs supporting the compensation for the architectural and/or engineering services of PROGRAM MANAGER to be provided under that certain Program Management Agreement dated as of _____, by and between The School Board of Orange County, Florida and Program Manager, concerning the delivery of the professional program management services required there under, are accurate, complete and current as of the time of contracting.

PROGRAM MANAGER:

PM FIRM

By: _____

Print Name: _____

Title: _____

Date: _____

SCHEDULE E

PROGRAM MANAGEMENT INVOICE REQUIREMENTS

All Invoices submitted under, or in connection with Services rendered pursuant to, any Program Management Agreement entered into with Owner (“Agreement”) must comply with, among other things, the following procedures, requirements and guidelines (“Guidelines”). General format, organization, and content of all Invoices are subject to OCPS approval and may be modified by OCPS, from time to time, at its discretion:

- I. **Submission of Invoices.** All Invoices submitted for program management services and/or for other reimbursable expenses in connection with the Agreement must be accompanied with a “Cover Summary Report” which shall include or identify the following information:
- a) company name, address, phone number, contact name
 - b) Invoice number
 - c) Invoice date
 - d) billing period
 - e) contract number
 - f) purchase order number
 - g) Work Authorization number and work description
 - h) total original hours - per the Work Authorization, current total forecasted hours, and the difference (variance)
 - i) maximum allowable amount – per the Work Authorization
 - j) approved for payment (or billed) previous to this invoice - total hours and total amount
 - k) contract balance prior to accompanying Invoice
 - l) amount due per accompanying Invoice
 - m) signed certification as to the accuracy of the information submitted
 - n) listing of all Projects (school/facility name and project title) in alphabetical order, together with the total hours and costs associated with each Project; and the total hours and costs for all Projects
- II. **Invoices for Staff Services/Labor Charges.** All Invoices for staff services and/or labor must include, or comply with, the following:
- a) **Detail Report.** A “Detail Report” listing every Project identified in the Cover Summary Report must accompany each Invoice for staff services and/or labor and must include a sub-listing under each Project, identifying program management staff names, hours, billable rate, and costs associated with each such Project. Hours/costs worked and incurred shall be itemized and allocated as follows:

- a) hours/costs identified with a specific Project shall be charged to that Project: Project Managers' and Field Representatives' (field staff) timesheets must indicate specific Projects and dates and hours spent on those Projects; core staff and intermediate staff must record hours associated with work on a Project, where time is spent on a specific Project.
- b) hours/costs incurred in connection with a learning community shall be allocated across all projects based on work-in-place billed for the specific learning community: Area Managers', and their support staff's, (intermediate staff) time must be allocated to Projects in their geographical area, based upon work-in-place billed, unless time is spent on a specific Project; core staff and field staff must record hours associated with work on a learning community, where time is spent on learning community tasks (and is not identifiable to a specific Project).
- c) hours/costs incurred in connection with the overall program shall be allocated across all Projects based on work-in-place billed for the program: core personnel's time must be allocated across all Projects underway, based upon work-in-place billed, unless time is spent on a learning community task or a specific Project; intermediate staff and field staff may record hours associated with work on the overall program, where time is spent on all Projects (and is not identifiable to a specific Project or to a specific learning community).
- d) where actual hours exceed billable hours, hours shall be pro-rated back to 40 per week (per contract requirements), before allocation.
- e) hours will be allocated based upon work-in-placed billed per Project.