

**CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER
FOR PRECONSTRUCTION SERVICES**

This contract is made as of the _____ day of _____ in the year **Two-Thousand** _____

between the Owner

School Board of Sarasota County
1960 Landings Boulevard
Sarasota, FL 34231

and the Construction Manager (CM)

Sarasota, FL _____

The Project is

{name of campus} _____
{name of project} _____

Sarasota, FL _____

Project Description Summary:

The Owner and Construction Manager agree as follows.

RECITALS

WHEREAS, the Owner intends to construct the Project and is engaging the CM to furnish or cause to be furnished all labor, equipment, materials, management and supervisory services required to provide preconstruction services for the Project.

WHEREAS, the Owner and CM each acknowledge that it will act in good faith in carrying out its duties and obligations.

WHEREAS, the Owner's engagement of the CM is based upon the CM's representations to the Owner that it; (i) is experienced in providing preconstruction services for projects of similar size and complexity to the Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the locality in which the Project is located; (iii) is qualified, willing and able to perform preconstruction services for the Project; and (iv) has the expertise and ability to provide preconstruction services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the

Project.

WHEREAS, the Owner and CM each acknowledges that it has reviewed and familiarized itself with this Contract and agrees to be bound by the terms and conditions contained therein.

WHEREAS, the Owner has engaged a Design Professional to perform architectural and/or engineering services for the Project, including preparation of site-specific Construction Documents.

ARTICLE 1 **THE CONSTRUCTION TEAM and EXTENT AND TERM OF CONTRACT**

1.1 The CM agrees to use its best skill and judgment and to cooperate with the Design Professional in furthering the interests of the Owner. The CM agrees to furnish efficient business administration and supervision and to use its best efforts to complete the preconstruction phase of the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2 The Construction Team: The CM, the Owner, and the Design Professional (the "Construction Team") will work as a team throughout the preconstruction phase. The CM shall provide leadership to the Construction Team on all matters relating to construction. The Design Professional will provide leadership to the Construction Team on all matters relating to design. Notwithstanding the above, the Owner shall make all final decisions regarding matters relating to the Project.

1.3 Extent and Term of Contract: This Contract represents the entire agreement between the Owner and the CM and supersedes all prior negotiations, representations or agreements. This Contract shall be in effect until such time as the Owner either [1] accepts the CM's proposed or modified guaranteed maximum price ("GMP") for the construction phase pursuant to Article 2, or [2] rejects the CM's proposed or modified GMP for the construction phase pursuant to Article 2, or [3] this Contract is terminated in accordance with the provisions of Article 8 herein. Upon the Owner's election to accept the CM's proposed GMP, Owner and CM will enter into a subsequent agreement which agreement will supersede this Contract. If the Owner elects to reject the CM's proposed GMP, this Contract will be deemed terminated and the Owner may, at its sole discretion, place the construction phase portion of the Project for either competitive bidding pursuant to Florida Statute 287.057, or competitive selection/negotiation pursuant to Florida Statute 287.055 and 1013.45(1)(c).

ARTICLE 2 **CONSTRUCTION MANAGER'S BASIC SERVICES**

2.1 The CM's basic services under this Contract are limited to preconstruction and bidding phase services.

2.2 Preconstruction Phase Services: The Construction Manager shall:

2.2.1 Provide preconstruction deliverables consisting of a report at Schematic Design, 100% Design Development, and a review at 50% Construction Documents together with a confirmation of scope. The reports shall include a complete discussion and summary

for the services provided in accordance with subparagraphs 2.2.2 through 2.2.9 herein below. These deliverables should include a comparison of any changes from the previous estimate.

2.2.2 Review designs during their development. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economics.

2.2.3 Provide, for the Design Professional's and the Owner's review and acceptance, a Project Schedule that coordinates and integrates the CM's services, the Design Professional's services and the Owner's responsibilities with anticipated construction schedules. The CM shall update this schedule periodically, as required.

2.2.4 Prepare for the Owner's approval a detailed estimate of construction costs, including quantity take-off and unit pricing, developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the Design Professional. Update and refine this estimate periodically as the Design Professional prepares Construction Documents. Notify the Owner and the Design Professional if it appears that the construction cost may exceed the Project budget. Make recommendations for corrective action

2.2.5 Coordinate Contract Documents by consulting with the Owner and the Design Professional regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost, or schedules.

2.2.5.1 Advise on the separation of the Project into contracts for various categories of Work. If separate contracts are to be awarded by the Owner, review the Drawings and Specifications and make recommendations as required to provide that [1] the Work of the separate contractors is coordinated with that of the Trade Contractors, [2] all requirements for the Project have been assigned to the appropriate separate contract, [3] the likelihood of jurisdictional disputes has been minimized, and [4] proper coordination has been provided for phased construction.

2.2.5.2 Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Subcontractor. Provide the Project Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction.

2.2.5.3 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Design Professional. Expedite and coordinate delivery of these purchases.

2.2.6 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages designed to minimize adverse effects of labor shortages.

2.2.7 Make recommendations for pre-qualification criteria for subcontractor bidders and develop subcontractor bidders' interest in the Project. Establish bidding schedules.

2.2.8 Attend bi-weekly and other scheduled meetings with the Construction Team, and prepare and distribute minutes.

2.2.9 Prior to the development of the GMP at 100% CD Documents, the CM will review the documents for accuracy, constructability, cost saving opportunities and bring all of these items to the attention of the Owner and the Design Professional. This will include discrepancies between all disciplines.

2.2.10 Based upon Drawings and Specifications produced by the Design Professional, develop GMP proposal(s), including Project Construction Schedule, itemized by Subcontract, for phases of Work as required by the Owner.

2.3 Bidding Phase: Within _____ days (____) after receipt of Drawings and Specifications that are 100% (one hundred percent) complete, the CM shall provide to the Owner a final GMP proposal, for all construction work contemplated by the Drawings and Specifications. The CM's proposal will be based on bids solicited by the CM from as many subcontractors as required by the Owner's procurement policy.

2.3.1 Within thirty (30) days of the Owner's receipt of the CM's proposal, the Owner will have the option, in its sole discretion, to either reject or accept the CM's proposal, or the Owner may request a modified CM's proposal in accordance with subsection 2.3.1.1. In evaluating the CM's proposal, the Owner may consider all factors and terms of this proposal, and is not limited solely to considering the amount of the proposal.

2.3.1.1 The Owner may request from the CM a modified GMP proposal utilizing the CM's suggested, and Owner approved, modifications to the project documents, including but not limited to the Drawings and Specifications, which are determined to be necessary to reduce the project costs to come within the project budget. All reasonable costs incurred to incorporate the approved modifications into the project documents shall be the responsibility of the CM and CM hereby agrees to pay for all such costs. The CM shall respond to a request for a modified proposal within twenty-one (21) calendar days of date of request. Owner shall then have a period of ten (10) calendar days to either accept or reject the CM's modified proposal.

2.3.2 If the CM's proposal, or modified proposal, is accepted by the Owner, a new agreement will be executed between Owner and CM relating to the construction phase of the Project. The terms of the agreement for the construction phase will be negotiated between the Owner and CM during the preconstruction phase but will be based primarily on the Owner's standard contract format at the time of the negotiations. A copy of this standard contract format will be made available to the CM upon request.

2.3.3 Nothing contained in this Contract shall require the Owner to accept any of the CM's proposals. Further, the CM agrees that the Owner has the unrestricted discretion to reject the CM's proposals if, based on the Owner's opinion and judgment, the rejection of the proposals is in the Owner's best interest.

2.3.4 The Owner's failure to specifically notify the CM of the Owner's decision not to accept the CM's proposal shall not be construed as the Owner's implicit acceptance of the proposal. Rather, in order for the CM's proposal to be accepted, the Owner must so specify such acceptance, in writing, within the times specified in subparagraphs 2.3.1 and 2.3.1.1, respectively. The Owner's failure to so notify the CM of the acceptance within the applicable time period shall constitute a rejection of the CM's proposals.

2.3.5 Upon either the Owner's acceptance or rejection of the CM's proposal, or modified proposal, this Contract shall terminate and expire without further notice. If the CM's proposal, or modified proposal, is rejected, neither party shall have any continuing obligations under this Contract or any other agreement related to the Project. Specifically, the Owner is not responsible for payment of any costs incurred by the CM in preparing revisions to the proposal or the modified proposal.

2.3.6 The CM agrees, notwithstanding any other provisions to the contrary, that should the Owner reject the CM's proposal, or modified proposal, the Owner has the discretion, but not the obligation, to procure construction management services for the Project through competitive bidding pursuant to Florida Statute 287.057, or competitive selection/negotiation pursuant to Florida Statute 287.055 and 1013.45(1)(c), using the documents generated and created during the preconstruction phase. The Owner agrees that if competitive bidding occurs, nothing in this Contract restricts the CM from bidding on the construction phase of the Project along with all other qualified bidders.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 The Owner shall designate a representative to act in its behalf. This representative or their designee will monitor the progress of the Work, serve as liaison with the CM and the Design Professional, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the Project. The CM will be notified in writing of the representative and their designee or any changes thereto.

3.2 The Owner shall provide the CM with a proposed project budget that may be mutually adjusted throughout the design phase.

ARTICLE 4 PAYMENTS TO CONSTRUCTION MANAGER

4.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager, as compensation for its services a lump sum of _____ **Cents (\$_____)**, which amount shall cover all fees, costs and expenses (excluding reproduction of 100% complete contract documents for bidding purposes) related in any manner to the Construction Manager's services during the preconstruction and bidding phases.

4.2 The lump sum amount referenced in paragraph 4.1 shall be paid over a period of _____ **months** in _____ (____) equal installments of _____ **Cents (\$_____)**. This time period is acknowledged by the Owner and Construction Manager as the anticipated total amount of time required for the preconstruction and bidding phase. This period shall commence on _____.

4.2.1 The Owner and Construction Manager agree that if the preconstruction and bidding services contemplated by this Agreement are fully completed prior to the expiration of the _____ month period referenced in paragraph 4.2, and the Agreement has not otherwise been terminated, any balance remaining on the lump sum amount will be paid by the Owner to the Construction Manager upon the Owner's final acceptance or rejection of the Construction Manager's proposal for the construction phase.

4.2.2 The Owner and Construction Manager agree that if the preconstruction and bidding services contemplated by this Agreement are not fully completed upon the expiration of the _____ month period referenced in paragraph 4.2, and the Agreement has not otherwise been terminated, the Construction Manager will thereafter be paid a monthly fee of **Zero Dollars (\$0.00)** until such time as the Construction Manager's proposal is either finally accepted or rejected by the Owner. If a major change occurs in the project program, the monthly fee for extension of the design phase shall be mutually renegotiated.

4.2.3 The Construction Manager agrees to submit invoices for the number of installments in the amount referenced in paragraph 4.2, or if applicable the amount referenced in subparagraph 4.2.2, to the Owner's representative on the first of the month, such invoice reflecting the amount due for the previous month. Owner agrees to pay said invoices, upon approval, within fifteen (15) days of submission. Such invoices shall be submitted on the agreed to basis.

ARTICLE 5

TERMINATION, SUSPENSION OR ABANDONMENT

5.1 This Contract may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Contract through no fault of the party initiating the termination.

5.2 If the Project is suspended by the Owner for more than ninety (90) consecutive days, the CM shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the CM's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the CM's services.

5.3 This Contract may be terminated by the Owner upon not less than seven (7) days' written notice to the CM in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the CM may terminate this Contract by giving written notice.

5.4 Failure of the Owner to make payments to the CM in accordance with this Contract shall be considered substantial nonperformance and cause for termination.

5.5 If the Owner fails to make payment when due the CM for services and expenses, the CM may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Contract. Unless payment in full is received by the CM within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the CM shall have no liability to the Owner for delay or damage caused the Owner because of such suspension.

5.6 If the CM does not perform the services herein for a period of fifteen (15) days after Owner approval or refuses to begin performance and diligently perform to completion, the Owner may terminate this Contract and the CM shall not be entitled to receive any compensation except sums already earned but not yet paid.

5.7 Notwithstanding paragraph 5.1, Owner may, at any time and for any reason, terminate this Contract upon not less than seven (7) days written notice to the CM. Under such circumstances, this Contract shall terminate on the date set forth in such written notice. In the event of such termination for convenience, the CM shall be entitled only to payment of that portion of the Contract Sum, as amended, which theretofore has not been paid to the CM and which shall compensate the CM for all services actually performed by the CM up to the date of termination.

5.8 In the event of any termination under this Article 5, the CM consents to Owner's selection of another CM of Owner's choice to assist the Owner in any way in completing the Project. The CM further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the Project by Owner and such other CM as the Owner may desire. Any services provided by CM which are requested by Owner after termination shall be fairly compensated by Owner.

5.9 The CM acknowledges and understands that the Project is being constructed on public property owned by the Owner, which property may at various times during preconstruction services be occupied by students, teachers, parents and school administrators. Accordingly, in order to secure the property, and otherwise comply with applicable law, the CM agrees to the following provisions and also agrees that the failure to comply with any of these provisions may result in the termination of this Contract:

5.9.1 Unauthorized Aliens. Owner considers the employment of unauthorized aliens by the CM, or any of its subcontractors, a violation of Section 274A (e) of the Immigration and Naturalization Act. If it is determined that an unauthorized alien is working on the Project, the CM shall take all steps necessary to remove such unauthorized alien from the property and the Project. Owner shall have the right to terminate this Contract if the CM does not comply with this provision.

5.9.2 Possession of Firearms. Possession of firearms will not be tolerated on the project or the Owner's property. No person who has a firearm in their vehicle may park their vehicle on the Owner's property. Furthermore, no person may possess or bring a firearm on School District property. If any employee/independent contractor of the CM, or any of its sub-contractors, is found to have brought a firearm on to the Owner's property, said employee/independent contractor shall be removed and terminated from the project by the CM. If a sub-contractor fails to terminate said employee/independent contractor, the CM shall terminate its agreement with the sub-contractor. If the CM fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor, this Contract may be terminated by the Owner. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive devise, or any machine gun. Powder actuated construction nailers and fasteners are excluded from this definition.

5.9.3 Criminal Acts. Employment on the project by the CM, or any of its sub-contractors, of any employee, or independent contractor, with any prior convictions of any crimes against children, crimes of violence or crimes of moral turpitude will not be tolerated. If it is determined that any person with such criminal history is on the project site, the CM agrees to take all steps necessary to remove such person from the project and the property. Owner shall have the right to terminate this Contract if the CM does not comply with this provision.

5.9.4 Sexual Predators/Sexual Offenders. In order to insure that no sexual predators or sexual offenders are working on the project site, the CM shall perform a query of all its employees/independent contractors working at the project site, and require all of its sub-contractors to perform a query of their employees/independent contractors working at the project site, against the Florida Department of Law Enforcement Sexual Predator/Offender Registry (www.fdle.state.fl.us). Any person who is on the Sexual Predator/Offender Registry shall not be allowed on the project and the CM shall immediately remove such person from the project and the property. The CM shall, upon request by the Owner, provide evidence that such queries have been done on all personnel working at the project site. The Owner shall have the right to terminate this Contract if the CM, or any sub-contractor, does not comply with this provision.

5.9.5 Possession/Use/Under the Influence of Mind Altering Substances. Possession/use and/or being under the influence of any illegal mind altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, by CM's employees/independent contractors or its sub-contractors' employees/independent contractors will not be tolerated on the Owner's property. If any employee/independent contractor is found to have brought and/or used or is under the influence of any illegal mind altering substances as described above on the Owner's property, said employee/independent contractor shall be removed and terminated from the project by the CM. If a sub-contractor fails to terminate said employee/independent contractor, the CM shall terminate its agreement with the sub-contractor for the project shall be terminated. If the CM fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor, this Contract may be terminated by the Owner.

5.9.6 Background Screening Requirements. The CM agrees that before any of its employees, agents or sub-contractors will be permitted on school grounds while students are present, such employees, agents or sub-contractors will be fingerprinted and have their backgrounds checked as provided by Florida law. The CM's employees, agents and sub-contractors will coordinate with the Owner to arrange a mutually convenient time for the Owner to conduct the fingerprinting. The CM agrees to bear the cost of the fingerprinting/background checks. The Owner has the right to refuse entry onto any school grounds to any individual whose background check does not meet the requirements established by the Owner pursuant to Florida law.

5.10 As required by Section 287.058, Florida Statutes, this Contract may be unilaterally cancelled by the Owner for refusal by the CM to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the CM in conjunction with the Contract.

ARTICLE 6
DISPUTE RESOLUTION

6.1 This Contract shall be governed by the laws of the State of Florida. All claims disputes and other matters in question between the CM and Owner arising out of or relating to this Contract or the Project, shall be resolved by mediation or litigation in Circuit or County Court in and for Sarasota County, Florida.

6.2 Unless a delay in initiating or prosecuting a claim, dispute, or other matter in question between the CM and Owner arising out of or relating to this Contract would irrevocably prejudice the Owner or the CM, any such matter which is not resolved by direct discussions between the parties shall be submitted to mediation under the Florida Rules of Civil Procedure or such other rules as the parties may promptly agree to employ, before recourse to litigation. The Owner and the CM shall within ten (10) days of the request of either party for mediation, agree in writing as to the identity of the mediator. If the parties do not agree, the Executive Director of Construction Services for the Owner shall designate a mediator from the list of approved mediators for the Twelfth Judicial Circuit in and for Sarasota County, Florida.

6.3 The parties agree to conduct and conclude mediation proceedings under this Article within thirty (30) days from the initiation of same by request of one of the parties. In the event that such proceedings have not been successfully concluded within such period, either party shall have the right to initiate further dispute resolution proceedings including litigation.

6.4 Provided the parties comply with the requirement of this Contract for providing notice of the existence of a claim or dispute, no delay in disposing of such claim or dispute while the parties pursue resolution as provided in this Article shall prejudice the rights of either party; however, nothing contained in this Article shall be deemed to relax any requirement for the giving of notice between the parties.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 The Owner and CM respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither Owner nor CM shall assign this Contract without the written consent of the other.

7.2 The CM warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the CM) to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for the CM) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

7.3 The CM agrees to indemnify and hold harmless the Owner, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CM or persons employed or utilized by the CM in the performance of this Contract.

7.4 The CM shall be familiar with and comply with:

7.4.1 All applicable state laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project or in any manner affecting the Work;

7.4.2 All Federal laws, rules and regulations that may in any manner affect the Work.

7.5 CM shall comply with Florida's Public Records Law including:

7.5.1 Keeping and maintaining public records that ordinarily and necessarily would be required by the OWNER in order to perform the service;

7.5.2 Providing the public with access to public records on the same terms and conditions that the OWNER would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

7.5.3 Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

7.5.4 Meeting all requirements for retaining public records and transfer, at no cost, to the OWNER all public records in possession of the CM upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the OWNER in a format that is compatible with the information technology systems of the OWNER.

7.6 Representation and Notices

7.6.1 The Owner's representative is:

{CSD Director}
Construction Services Department
Sarasota County Schools
7895 Fruitville Road
Sarasota, FL 34240

7.6.2 The CM's representative is:

7.6.3 Neither the Owner's nor the CM's representative shall be changed without ten (10) days' written notice to the other party.

7.6.4 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by e-mail; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by e-mail or facsimile shall be deemed given the next

business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

This Contract is entered into as of the day and year first written above and is executed in one (1) original copy, of which one (1) electronic copy is to be delivered to the CM and the original copy shall be retained by the Owner.

School Board of Sarasota County

(Construction Manager)

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

_____, Board Chair
(Printed name and title)

(Printed name and title)

Approved for Legal Content: – MG 3/2018
Matthews, Eastmoore, Hardy, Crauwels & Garcia
Attorneys for Sarasota County Schools
Signed: MG

[SBSC/CSD Use Only:](#)
Reviewed & Approved for Construction Manager Signature:

PM / DATE: _____

CSD/D / DATE: _____

Reviewed & Approved for Board Chair Signature:

PM / DATE: _____

CSD/D / DATE: _____