



Contract # _____
Approval Date: _____

The School District of Osceola County, Florida

CONSTRUCTION AGREEMENT

This Construction Agreement (hereinafter the "Agreement") is made by and between THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA, located at 817 Bill Beck Boulevard, Kissimmee, FL 34744 (hereinafter "Owner") and _____, located at _____ (hereinafter "Contractor").

WHEREAS, the Owner owns that certain parcel of land (hereinafter referred to as the "Site") having a street address of _____; and

WHEREAS, the Owner has retained the services of _____ (hereinafter referred to as the "Design Professional") to perform design services for the _____ (hereinafter referred to as the "Project"); and

WHEREAS, the Owner hereby retains the services of the Contractor pursuant to **INVITATION TO BID (ITB)# SDOC-25-B-057-GC** to manage and construct the Project on the Site as more particularly set forth in this Agreement.

WHEREAS, the following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A- General Terms and Conditions
- Exhibit B- Scope of Work
- Exhibit C- Performance and Payment Bonds
- Exhibit D- Construction Schedule
- Exhibit E- Schedule of Values
- Exhibit F- Truth-In-Negotiation Certificate

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE**

That Contractor agrees with Owner, for the consideration herein mentioned, at his, its or their own proper cost and expense to do all the Work and furnish all the materials, equipment, supplies, and labor necessary to carry out this Contract in the manner and to the full extent as set forth in the Contract Documents, and to the satisfaction of the duly authorized representatives of the Owner, who shall have at all times full opportunity to inspect the materials to be furnished and the Work to be done under this Contract.

2. **GENERAL DESCRIPTION OF WORK**

The Contractor shall furnish or cause to be furnished, and pay for out of the Contract Sum, all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, water, heat, utilities, transportation and other facilities necessary for proper execution and completion of its

scope of the Work in accordance with all of the terms and conditions of this Agreement. The general nature of the Scope of Work that the Contractor is to complete is briefly described in the Project Description of the ITB.

3. TIME FOR PERFORMANCE

Commencement of Construction

The Contractor shall commence construction on or before [REDACTED] (the "Commencement Date").

Substantial Completion

The Contractor shall accomplish Substantial Completion on or before [REDACTED] (the "required date of Substantial Completion").

Final Completion

The Contractor shall accomplish Final Completion on or before [REDACTED] (the "required date of Final Completion").

Construction Schedule

Within five (5) business days after the execution of this Agreement, the Contractor shall provide the Owner's Project Representative and Design Professional with a final Construction Schedule for their review and acceptance.

4. COMPENSATION OF CONTRACTOR

The Owner shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely and complete performance of its obligations hereunder the not-to-exceed fixed price of **TBD Dollars (\$ TBD .00)**. A not-to-exceed reimbursable cost for Payment and Performance bonds has been established in the amount of **TBD Dollars (\$.00)**. The amount of **TBD Dollars (\$.00)** is the Contract Sum and includes the aggregate amount of all allowances and any unit price items to be furnished or installed.

5. COMPENSATION FOR CHANGE ORDERS

For change orders directed by Design Professional to be performed by the Contractor on a time and materials basis, the Contractor shall be reimbursed the actual incurred cost and expense plus a markup of four percent (4%) for the change order Work performed by its forces. Contractor must provide the backup from their subcontractors and sub-subcontractors with their Change Order documentation.

When additional or unforeseen Work by the Contractor's subcontractors and suppliers is required and approved, the Contractor shall be reimbursed the actual incurred costs and expenses paid to those subcontractors and suppliers, plus an aggregate markup including subcontractors and sub-subcontractors of fifteen percent (15%). Contractor must provide the backup from their subcontractors and sub-subcontractors with their Change Order documentation.

If the Contractor disputes a change order decision, it must give the Owner's Project Representative its written notice of dispute, including the reasons therefore, within three (3) calendar days of the disputed decision.

The Contractor's proposal for changes in the Contract Sum shall be submitted within seven (7) business days of the Owner's Project Representative's request, unless the

Owner's Project Representative extends such period of time due to the circumstances involved. Changes to the Contract Time must be submitted ten (10) days prior to the contracted time.

6. RELATIONSHIP OF PARTIES

The Contractor accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Contractor's reasonable skill and judgment to cooperate with the Design Professional in furthering the interests of the Owner. The Contractor shall furnish construction administration and management services, and use the Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Design Professional, Contractor and other persons or entities employed by the Owner for the Project. Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any other person or entity other than the Owner and Contractor.

7. CONTRACT DOCUMENTS

The Contract Documents shall consist of this Agreement, the drawings and specifications and any addenda issued thereto, the Invitation to Bid Solicitation Document and all addenda, and all written proposals and responses from Contractor, and any amendments issued after execution of this Agreement. Any amendment to this Agreement shall only be effective if it is reduced to writing, and duly executed by both parties.

- a. The term "Work" as used herein refers to all construction and other services required by the Contract Documents, including all labor, supervision, materials, equipment, tools, supplies, incidentals operations and activities and services required by the Contract Documents or reasonably inferable by the Contractor as necessary to complete the project and produce the results intended by the Contract Documents in a safe, expeditious, orderly and workmanlike manner, and in the best manner known to each respective trade.
- b. The term "Drawings" as used herein means the graphic and pictorial portions of the Contract Documents, which serve to show the design, location and dimensions of the Work to be performed.
- c. The term "Specifications" also referred to as the "Project Manual" as used herein means that portion of the Contract Documents, which are the written requirements for the materials, equipment, systems, standards and workmanship for completion of the Work and performance of related services.
- d. The term "Provide" as used herein shall mean to furnish and install materials and equipment, together with all incidentals for a complete and ready to use item and system.
- e. The term "Substantial Completion" as used herein is the date established in the Contract Documents, and is the date when the Work, or a designated portion thereof, as defined in the Contract Documents or by Owner, is sufficiently complete so that the Owner may occupy or utilize the Project for its intended use, and only minor items which can be corrected or completed without any material interference with the Owner's use of the project remain to be corrected or completed. A

Certificate of Occupancy or Certificate of Completion shall also be achieved in order to consider the project to have met Substantial Completion.

- f. The term “Final Completion” as used herein is the date established in the Contract Documents, and is the date when the Design Professional has completed a satisfactory final inspection of the project and a thorough review of the Contractor’s final application for payment. Upon doing so, the Design Professional will issue a Certificate of Final Inspection indicating that the Contractor has met all contractual obligations.
- g. The term “Certificate of Final Inspection” as used herein is issued when the Design Professional has completed a satisfactory final inspection of the project and a thorough review of the Contractor’s final application for payment.
- h. The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the scope of the Work by the Contractor. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Agreement unless it is specifically indicated in the Contract Documents that such Work is to be done by others. In the event the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or better quantity of Work unless otherwise directed by a written addendum to the Agreement. In the event of discrepancies among the Contract Documents, the documents shall be construed according to the following priorities:
 - Highest Priority- Construction Agreement
 - Second Priority- Amendments to drawings and specifications – later date to take precedence
 - Third Priority- Specifications
 - Fourth Priority- Drawings
 - Fifth Priority- Invitation to Bid Document and all addenda, and all written proposals and responses from Contractor.
- i. All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.
- j. Where codes, standards, requirements and publications or public and private bodies are referred to in the Specifications, such references are to the latest revision prior to the date of receiving bids, except where otherwise indicated.
- k. Where no explicit quality or standards for materials or workmanship are established for the Work, such Work is to be of good quality and what is reasonably inferable from the Drawings and consistent with the quality of the surrounding Work and of the construction of the Project generally.
- l. All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer’s written or printed directions and instructions unless otherwise indicated in the Contract Documents.

- m. The mechanical, electrical and fire protection drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Prior to beginning such work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the mechanical, electrical and fire protection installations and demonstrating to the Contractor's satisfaction that the installations will comply with the preceding sentence and all applicable codes.
- n. Exact locations for fixtures and outlets shall be obtained from the Design Professional before the Work is roughed in. Work installed without such information from the Design Professional shall be relocated at the Contractor's expense.
- o. Where the Work is to fit with existing conditions or Work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or Work at no additional cost to the Owner, unless otherwise specified.

8. PROJECT MANAGEMENT COMMUNICATIONS

At the discretion of District staff, the Contractor shall utilize the e-Builder project management system as described in the Invitation To Bid. Contractor will be required to attend a 3-hour training session to be provided by District staff.

9. OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents prepared by the Design Professional, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, subcontractors, sub-subcontractors, or material suppliers on other projects, without the specific written consent of the Owner. The Contractor, subcontractors, sub-subcontractors, and material suppliers are granted only a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Design Professional appropriate to and for use in the execution of their Work under the Contract Documents.

10. PERFORMANCE GUARANTY

That Contractor guarantees to repair, replace or otherwise make good to the satisfaction of the Owner any defect in workmanship or material appearing in the Work; and further guarantees the successful performance of the Work for the service intended. Neither inspection nor payment, including final payment, by the Owner shall relieve the Contractor or its Surety from his or its obligations to do and complete the Work in accordance with this Contract. If the Owner deems it inexpedient to require the Contractor to correct deficient or defective Work, an equitable deduction from the contract price shall be made therefore or in the alternative, if the expense incurred by the Owner to correct deficient or defective Work exceeds the unpaid balance on this Contract, the Contractor shall pay the difference to the Owner. The liability of the Contractor and its surety or sureties for such payment is joint and several.

11. PROGRESS PAYMENTS

Applications for Payment are submitted by the Contractor to the Design Professional and Owner's Project Representative for review. Once the Applications for Payment are issued by the Design Professional, the Owner shall make progress payments to the Contractor as provided below and elsewhere in the Contract Documents.

- 11.1** At the time or times established in this Agreement, the Contractor shall submit to the Design Professional and Owner's Project Representative an itemized Application for Payment for Work completed in accordance with the previously submitted schedule of values. The Application for Payment shall be signed by the Contractor, and notarized, and shall be supported by sufficient data which serves to establish the Contractor's right to the payment, such as requisitions from subcontractors or material suppliers, and reflecting retainage of 5% which may be withheld until substantial completion. Upon Substantial Completion, Owner may withhold as retainage up to 150% of the total estimated costs to complete any disputed items necessary to render complete, satisfactory, and acceptable the Work to be performed by Contractor under this Agreement and in accordance with the Contract Documents. The period covered by each application for Application for Payment format and number of copies of such Applications for Payment shall be in a format as requested by the Owner's Project Representative.
- 11.2** The Contractor shall process the Applications for Payment and deliver them to the Facilities Division Bookkeeper, as the single agent/point of contact, by the 20th of the month.
- 11.3** The Application for Payment, in a format approved by the Owner's Project Representative, shall reflect the amount of Work completed each month separated by materials stored and labor, inclusive of Contractor's Fee, as a percent complete of each line item within the schedule of values for the Project. In the event of a discrepancy within the Pay Application, the Contractor shall, upon request from the Owner's Project Representative, provide all required invoices, payrolls, petty cash accounts and any other evidence required by the Owner's Project Representative to verify the values indicated as percent complete in the Application for Payment.
- 11.4** Applications for Payment shall not include any requests for payment of amounts the Contractor does not intend to pay to a subcontractor or material supplier, for any reason.
- 11.5** Applications for Payment shall only be made on account of materials and equipment delivered and suitably stored at the Site for incorporation into the Work. Payments shall not be made for materials that are not suitably stored at the Site.
- 11.6** By submitting an Application for Payment, the Contractor warrants that full and complete title will vest in the Owner with regard to all Work covered by an Application for Payment, no later than the time of such payment. Additionally, all Work represented by a submitted Application for Payment shall be free and clear of any and all liens, claims, security interests or encumbrances in favor of any person or entity. Each Application for Payment shall be accompanied by a waiver of lien from each subcontractor or a certificate from each subcontractor stating that the subcontractor has been paid all amounts due the subcontractor from previous applications.
- 11.7** Upon receipt of the Design Professional's certificate for payment, the Owner shall make payment to the Contractor. The Contractor shall promptly pay each subcontractor out of the amounts paid to the Contractor on account of such subcontractor's portion of the Work, minus any percentages retained as retainage from payments made to the Contractor on account of such subcontractor's portion

of the Work. The Contractor shall, by appropriate written agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors and material suppliers in a similar manner. However, neither the Owner nor the Design Professional shall have an obligation to pay or to see the payment of money to a subcontractor, sub-subcontractor or material supplier.

- 11.8** Any certificate for payment, progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of any work not in accordance with the Agreement or Contract Documents. Notwithstanding the above, the Contractor shall receive final payment within 20 business days from the executed Certificate of Final Inspection, unless the Contractor is notified of failure to meet the Contract requirements.
- 11.9** If the Owner so desires, the Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Design Professional by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of final payment have been met, the Design Professional will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner's Project Representative a final certificate for payment with a copy to the Contractor, or notify the Contractor and Owner's Project Representative in writing of the Design Professional's reason for withholding a certificate.
- 11.10** Prior to the first Application for Payment, the Contractor shall submit to the Design Professional a Schedule of Values for the Work to be performed, in a format and with sufficient supporting data, as may be required by the Design Professional. This Schedule of Values, unless objected to by the Design Professional or otherwise found to be inaccurate, shall be the basis for review of the Contractor's Application for Payment.
- 11.11** When the Contractor deems the Work or a designated portion thereof as defined in the Contract Documents to be substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected, which comprehensive list shall be referred to as the "Contractor's Completion List." The Contractor shall be responsible for completion and correction of all items on the list. Any item not included on the list that does not comply with the Contract Documents, shall be added to the list and promptly corrected by the Contractor. The submission of the list by the Contractor does not in any respect alter the ultimate responsibility of the Contractor to complete the project in accordance with the Contract Documents.
- 11.12** Upon receipt of the Contractor's Completion List, the Design Professional, after inspection of the Work, may add additional items to the list, which the Contractor shall promptly correct. When the Design Professional determines that the Work or designated portion thereof as defined in the Contract Documents is substantially complete, the Design Professional shall issue a Certification of Substantial Completion which establishes: the date of substantial completion; the "Substantial Completion Punch List", which establishes a single list providing feedback to the Contractor on non-conforming work, or work requiring further quality adjustments; the date the Contractor will have completed all items on the Substantial Completion Punch List, and such other items as the Design Professional and Owner's Project

Representative deem appropriate. The Certificate of Substantial Completion shall be executed by the Design Professional, Contractor and Owner.

- 11.13** Upon full execution of the Certificate of Substantial Completion, and upon the Application for Payment by the Contractor and the issuance of certification for payment by the Design Professional, the Owner may make payment to the Contractor adjusting the retainage withheld for the Work or portion thereof reflected in the certificate of substantial completion.
- 11.14** The Owner may, at its discretion, occupy or use any completed or substantially completed portion of the Work, prior to the Final Completion of the Project. Prior to such Owner partial occupancy or use, the Owner's Project Representative, Contractor and Design Professional shall inspect the area to be occupied in order to document the condition of the Work. However, in no event, shall the Owner's partial occupancy or use of the Work constitute acceptance of any Work not in compliance with the requirements of the Contract Documents.
- 11.15** Final payment by the Owner to the Contractor shall not constitute a waiver of any claim the Owner may have against the Contractor for Work not in compliance with the Construction Documents. However, acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of any claims by that entity or individual, except those previously made in writing and clearly identified as unsettled at the time of the final application for payment and payment thereon.

12. PUNCHLIST PROCEDURES

Further to 218.735(7)(a)(1) Florida Statutes, punchlist procedures to render the Work complete, satisfactory and acceptable are established as follows:

1. Within five (5) days of Substantial Completion of the construction services purchased as defined in the Contract, Contractor shall schedule a walkthrough with Owner's Project Representative ("Initial Walkthrough" a/k/a "IW"). The purpose of the IW is to develop a preliminary checklist ("Checklist") of items to be performed by the Contractor, based upon observations made jointly between the Contractor and Owner's Project Representative during the IW. The IW is to occur within ten (10) days of Substantial Completion of the Work as defined by the Contract, again predicated upon the Contractor's timely initiation of a request for the IW. At its option, Owner's Project Representative may conduct the IW with its Field Inspector.
2. Contractor shall endeavor to address and complete as many items as possible noted on the Checklist either during the IW itself, or thereafter for a period of fifteen (15) days from the date of the IW.
3. No later than fifteen (15) days following the scheduled IW, Contractor shall again initiate and request a second walkthrough of the Project with Owner's Project Representative. The purpose of this second walkthrough is to identify which items remain to be performed from the IW Checklist and to supplement that list as necessary (based, for example, upon work which may have been damaged as a result of the Contractor's performance of completion of items contained on the IW Checklist) and for the purpose of developing a joint Final Punchlist.

4. The intent of this section is for Owner's Project Representative and the Contractor to cooperate to develop a Final Punchlist no later than thirty (30) days from the date of reaching Substantial Completion of the construction services purchased as defined in the Contract.
5. In no event may the Contractor request payment of final retainage under 218.735(7)(d) Florida Statutes until the Contractor considers the Final Punchlist to be 100% complete.
6. Contractor agrees to complete the Final Punchlist items within forty-five (45) days of the date of its issuance by Owner's Project Representative.
7. Contractor acknowledges and agrees that no item contained on the Final Punchlist shall be considered a warranty item until such time as (a) the Final Punchlist is 100% complete, and (b) Owner has been able to operate or utilize the affected punchlist item for an additional period of fifteen (15) days.
8. Contractor acknowledges and agrees that Owner's Project Representative may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the Contractor to address. The intent of any such Owner's Project Representative generated lists prior to Substantial Completion is to attempt to streamline the punchlist process upon achieving Substantial Completion, and to allow for the Contractor to address needed areas of corrective work as they may be observed by Owner's Project Representative during performance of the Work.
9. Contractor acknowledges and agrees that in calculating 150% of the amount which may be withheld by Owner as to any Final Punchlist item for which a good faith basis exists as to it being complete, as provided for by 218.735(7)(d) Florida Statutes, Owner may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punchlist item. Such percentage shall in no event relate to the schedule of value associated with such Work activity, but rather total costs are based upon the value (i.e. cost) of completing such Work activity based upon market conditions at the time of Final Punchlist completion.

13. REDUCTION OF RETAINAGE PROCEDURES

Contractor may request a reduction of retainage as provided for by 218.735(8) Florida Statute. The term "Fifty Percent Completion" as contained in 218.735(8)(b) Florida Statute shall be defined as follows, in lieu of any other definition:

"Fifty Percent Completion" of the Work is defined as that point in time where 50% of the overall value of Work items incorporated and which will remain in place subsequent to final completion of the Work have been completed, based upon the Schedule of Values contained in the Contract. As such, and by way of example, the value of Contractor's mobilization, general conditions, supervision or like items which do not involve permanent incorporation of Work do not apply to the determination of "Fifty Percent Completion" of the Work for purposes of establishing entitlement to a reduction of retainage.

14. GUARANTEE

The Contractor guarantees to repair, replace or otherwise make good to the satisfaction of the Owner any defects in workmanship or material appearing in the work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later. Contractor further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment by the Owner shall relieve the Contractor from his or its obligations to do and complete the work in accordance with this contract. If the Owner deems it inexpedient to require the Contractor to correct deficient or defective materials or labor, an equitable deduction from the contract price shall be made therefore or in the alternative, the Owner may sue for damages. This guarantee is in addition to any other warranty available to the Owner for the Work including but not limited to manufacturers warranties.

15. REIMBURSEMENT OF CONSULTANT EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the Owner for all expenses of consulting and inspection incurred by the Owner during the period between said specified or adjusted time and the actual date of final completion. All such expenses for consulting and inspection incurred by the Owner will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as Consultant charges associated with the construction contract administration, including resident project representative costs.

16. ASSIGNMENT

The Owner reserves the right to freely assign this Contract. The Contractor, however, shall not assign this Contract to any other persons or firm without first obtaining Owner's written approval. In addition, the Contractor shall not have the right to assign any or all of its rights and interests under this agreement to any subsidiary or parent company, or any successor to its business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets without the express written consent of the Owner. For purposes of this paragraph, a transfer of substantially all of its assets shall be deemed to occur when the owner(s) of more than 50% of the proprietary interest in the business entity transfer, other than between themselves, their immediate families or their heirs, such proprietary interest to another person, firm, partnership, corporation or business entity. Any attempt to effect an assignment without Owner's prior written consent shall be deemed a default subject to the remedies provided herein.

17. WARRANTY

The Contractor hereby warrants to the Owner that all materials and equipment furnished under the Agreement will be of good quality and new, and that the Work performed will be free from any and all defects and will be in conformity with the requirements of the Contract Documents. All Work not conforming to these requirements may be declared defective by the Owner. If requested, the Contractor shall furnish evidence to the satisfaction of the Owner's Project Representative of the quality of the materials and equipment supplied. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. Prior to Final Payment the Contractor shall procure and deliver to the Design Professional and Owner's Project Representative all special warranties required by the Contract Documents.

18. SUBSTITUTIONS

In no case shall a substitution be granted where the Owner requires a sole source item to

match existing School District standards.

In requesting approval of deviations or substitutions, the Contractor shall provide evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Design Professional or Owner's Project Representative, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Design Professional may reject such substitution or deviation without further investigation. The Design Professional shall not unreasonably reject the request of the Contractor.

The contract documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The Design Professional shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the project, as well as for their intrinsic merits. The Design Professional will not approve as equal to materials specified proposed substitutes that, in the Design Professional's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Contractor shall, if required by the Design Professional, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

19. OTHER RESPONSIBILITIES

The Contractor is solely responsible for reviewing and comparing the Contract Documents with each other and shall immediately report to the Design Professional any and all errors, inconsistencies or omissions. In the event the Contractor performs any Work with the knowledge that it involves an error, inconsistency or omission in the Contract Documents, the Contractor shall be responsible for such erroneous, inconsistent, or omitted Work. The Contractor is also responsible for taking such field measurements as are necessary in order to verify field conditions and to compare such field measurements and conditions with the Contract Documents. Any and all errors, inconsistencies or omissions shall be immediately reported to the Design Professional.

- 19.1** The Contractor shall be solely responsible for supervising and directing the Work, and shall have sole responsibility for determining appropriate construction means, methods, techniques, sequences and procedures, and for coordinating the Work under the Contract Documents. The Contractor shall be solely responsible to the Owner for the acts and omissions of all entities or persons performing or supplying any portion of the Work for which the Contractor has contracted.
- 19.2** The Contractor is not relieved of its obligations to perform the Work in accordance with the Contract Documents by any activity of the Design Professional, unless such change to the Work has been reduced to writing and executed by the Owner or the Owner's Project Representative and in compliance with School Board Rule.
- 19.3** The Contractor shall pay all applicable sales, consumer, use and similar taxes for the Work, which are legally required.
- 19.4** No city or county permits or inspection fees are required on school property. The Owner will pay costs of any impact, pollution control, any and all state and federal environmental permits including but not limited to clean water act permits, or

connection fee charged to cover costs of central plants and main trunk line. When the Contract Documents require connection from the Work into utility lines or streets, the Contractor shall pay all costs of such connections, including any required permits or inspection fees, regardless of whether Work is done by the Contractor or by the utility supplier. Permits for such Work may need to be coordinated by the Design Professional for permit application.

- 19.5** In-progress inspections by city or county officials or their inspectors are not required on school property. State certified inspectors or representatives employed by the Owner will check for compliance with applicable codes and monitor the course of construction on the Owner's behalf. This inspector may call to the Contractor's attention, Work which is considered to be not in accordance with the Drawings and Specifications, and therefore unacceptable. The Contractor will either repair or replace such construction, or appeal to the Design Professional for a ruling. The Design Professional will be the final authority as to acceptability of Work, and the inspector will not by inference, be accepting Work on the Design Professional's behalf. The inspector may from time to time request changes in the Work, which will enhance the job or remove an undesirable condition. In such instances, the Owner's request will be in writing to the Contractor through the Design Professional.
- 19.6** The Contractor shall comply with and give notices required by all applicable laws, ordinances, rules, regulations and lawful orders of public authorities with regard to the performance of the Work. In the event the Contractor observes that any portions of the Contract Documents are not in compliance with the above, the Contractor shall immediately notify the Design Professional and Owner's Project Representative in writing of such variances. In the event the Contractor performs any Work with knowledge that it is at variance with applicable laws, ordinances, rules, regulations and lawful orders of public authorities without giving such notice, then the Contractor shall be responsible for the attributable costs for such Work.
- 19.7** The Contractor shall employ a competent superintendent who shall be the Contractor's representative, reasonably acceptable to the Owner's Project Representative, and necessary assistants who shall be in attendance at the Project Site full time during the progress of the Work until the date of substantial completion, and for such additional time thereafter as the Owner's Project Representative and Contractor both agree to be necessary for the expeditious completion of the Work. The Contractor shall remove the superintendent if requested to do so in writing by the Owner's Project Representative, and shall promptly replace her/him with a competent person reasonably acceptable to the Owner's Project Representative.
- 19.8** The Contractor shall retain a competent registered professional engineer or registered land surveyor, acceptable to the Design Professional, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated Work such as, but not limited to, roads, utilities and site grading. The engineer or land surveyor shall certify the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.
- 19.9** The Contractor shall establish the building grades, lines, levels, column, wall and

partition lines required by the various subcontractors in laying out their Work.

- 19.10** The Contractor shall arrange for and attend job meetings with the Design Professional, Owner's Project Representative and such other persons as the Design Professional and Owner's Project Representative may from time to time wish to have present. The Contractor shall be responsible for recording and distributing meeting minutes. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any subcontractor or sub-subcontractor shall attend such meetings if the representative's presence is required by the Design Professional or Owner's Project Representative. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change order, time schedules, manpower, unless the above listed items require approval by the Owner's Project Representative. Any notices required under the Agreement may be served on such representatives.
- 19.11** The superintendent as designated by the Contractor and accepted by the Owner's Project Representative and Design Professional shall not be reassigned from the job prior to Final Completion, except with the approval of the Owner's Project Representative.
- 19.12** The Contractor shall be required to prepare a schedule of submittals for the Design Professional's approval, which is coordinated with the construction schedule, allowing sufficient time for architectural review. The submittals shall reference progress schedule dates for installation and Specification section. The Contractor shall be required to meet with the Design Professional, the Design Professional's subconsultants and the Owner's Project Representative to agree to the management of the review of submittals. The Owner's Project Representative shall be provided with one copy of the accepted schedule of submittals for the Owner's records. The accepted schedule of submittals shall be in a format approved by the Owner's Project Representative.
- 19.13** The Contractor shall maintain at the Project site one record copy of the Drawings, Specifications, addenda, change orders and any other modifications, which serve to indicate all current changes, in addition to all approved shop drawings, product data samples, and all other similar submittals. The Contractor shall maintain as built drawings at the Project site. The as built drawings shall document all changes in the Drawings and Specifications made during the course of the Work. The as built drawings shall be in sufficient form and detail to permit the Owner's Project Representative to maintain and repair the Work after its completion. At the completion of the Work, these items shall be delivered to the Design Professional for transmittal to the Owner's Project Representative.
- 19.14** The Contractor shall review, approve and submit to the Design Professional any and all shop drawings, product data, samples and any other similar submittals which are required by the Contract Documents, and allow a reasonable amount of time for review by the Design Professional, without impacting the Work schedule. The Contractor shall not perform any part of the Work relating to the shop drawings, product data, samples or any other similar submittals, until such items have been approved by the Design Professional.

- 19.15** The Design Professional's approval of any shop drawing, product data, sample or other similar submittal does not in any way relieve the Contractor of responsibility for deviations from the requirements of the Contract Documents. Further, the Contractor shall not be relieved of responsibility for any errors or omissions in the shop drawings, product data, samples or any other similar submittals simply by the Design Professional's approval. In the event a deviation is requested, the Contractor shall specifically identify the deviation in writing to the Design Professional at the time of the submittal and the Design Professional is required to respond in writing to approve the specified deviation. By approving and submitting shop drawings, product data, samples, and similar submittals, the Contractor represents that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted shop drawings, product data, samples, or similar submittals and verification of compliance with all the requirements of the contract documents. The accuracy of all such information is the responsibility of the Contractor.
- 19.16** When professional certification of performance criteria of materials, systems or equipment is required by the contract documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Design Professional shall be expected to make any independent examination with respect thereto.
- 19.17** The right of possession of the premises and the improvements made thereon by the Contractor shall be retained at all times by the Owner. The Contractor's right to enter arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine the Contractor's equipment, the storage of materials and the operations of the Contractor's workmen to the Project site and according to the directions of the Design Professional, and shall not unreasonably encumber the premises with the Contractor's materials.
- 19.18** The Contractor shall keep the premises, the surrounding area and property free from all waste, construction debris, or trash. At the completion of the Work, the Contractor shall remove all tools, construction equipment, machinery and surplus materials. In the event the Contractor fails to keep the premises, surrounding area and property in a clean condition, the Owner may do so and charge the cost back to the Contractor.
- 19.19** Immediately prior to the Design Professional's inspection for substantial completion, the Contractor shall completely clean the premises utilizing a licensed cleaning service. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense.

20. NOTICES

All notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) by delivering the same in person to such party, (i) personal

delivery, or (ii) overnight courier, or (c) by facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

If to Owner: Chief Facilities Officer
Facilities Division
The School District of Osceola County, Florida
817 Bill Beck Boulevard
Kissimmee, FL 34744
Phone: (407) 518-2964
Fax: (407) 518-2965

Contractor: To Be Determined
Address
Phone:
Fax

By giving the other party at least 15 days written notice, each party shall have the right to change its address and specify as its new address any other address in the United States of America.

21. NON-WAIVER

The rights of the parties under this Contract shall be cumulative and the failure of either party to exercise properly any rights given hereunder shall not operate to forfeit any of the said rights.

22. CONFLICT OF INTEREST

The Contractor 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, as provided for in Section 112.313, Florida Statutes and as may be amended from time to time. The Contractor further represents that no person having any interest shall be employed for said performance.

The Contractor shall promptly notify the Owner's Project Representative in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of Work that the Contractor may undertake and request an opinion of the Owner as to whether the association, interest or circumstance would, in the opinion of the Owner, constitute a conflict of interest if entered into by the Contractor. The Owner agrees to notify the Contractor of its opinion by certified mail within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the Owner, the prospective business association, interest or circumstance would not constitute a

conflict of interest by the Contractor, the Owner shall so state in the notification and the Contractor shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Owner by the Contractor under the terms of this Contract.

23. FORCE MAJURE

With regard to the performance under this Agreement, a party shall not be deemed to be in default of this Agreement, or have failed to comply with any term or conditions if, for reasons beyond the parties reasonable control, including without limitation acts of God, natural disaster, labor unrest, war, declared or undeclared, the existence of injunctions or requirements for obtaining licenses, easements, permits or other compliance with applicable laws, rules and regulations, such performance is not reasonably possible within such time periods, then the time for such performance shall be extended until removal of such reasons beyond the parties reasonable control, provided that the party commences such performance as soon as reasonably possible and diligently pursues such performance.

24. GOVERNING LAW VENUE

This Agreement shall be governed and construed under the laws of the State of Florida. Except for a suit in federal court, Osceola County, Florida shall be the proper place of venue for all suits to enforce this Agreement. Any legal proceeding arising out of or in connection with this Agreement shall be brought in the Circuit Courts of Osceola County, Florida, or if appropriate, the United States District Court for the Middle District of Florida, Orlando Division. Notwithstanding any other provision of the Contract Documents, the Owner does not agree to, nor shall the parties arbitrate in any matter whatsoever any issue arising out of this Agreement, the Contract Documents or the performance thereof. The Owner does not agree to pay attorneys' fees to the prevailing party in connection with a dispute arising out of this Agreement or the Contract Documents.

25. WAIVER OF JURY TRIAL

The parties expressly waive the right to a jury trial for any claims or disputes arising out of, and in connection with, this Agreement and performance of the Work in accordance with the Contract Documents.

26. DISPUTE RESOLUTION

The dispute resolution process shall be as described in section 218.76 (2), Florida Statutes.

To the fullest extent allowed by law, the parties mutually agree to waive the provisions of Chapter 558, Florida Statutes. The School Board of Osceola County is a governmental entity and the parties agree that it is in their mutual interests to waive the procedural requirements contained in Chapter 558.

27. RIGHT TO ENTER THIS AGREEMENT.

Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performances and obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full right and authority to enter into this Agreement and to perform its obligation under this Agreement. Upon written request, each party agrees to supply the other party with evidence of its full right and authority.

28. CONDUCT WHILE ON SCHOOL PROPERTY

The Contractor acknowledges that its employees and agents must behave in an appropriate manner while on the premises of any school facility and shall at all times conduct themselves in a manner consistent with School Board policies and subject to the administrator or designee. It will be considered a breach of this Agreement for any agent or employee of the Contractor to behave in a manner which is inconsistent with good conduct or decorum, or to behave in any manner which will disrupt the educational program or constitute any level of threat to safety, health, and well being of any student or employee of the School Board. The Contractor agrees to immediately remove any agent or employee if directed to do so by the building administrator or designee.

29. OWNER TRANSFER OF INTEREST

If the Owner conveys its interest in the Project to a third party, any rights which the Owner may have against the Contractor arising from this Agreement shall automatically transfer to such third party without the necessity of a written document or consent from the Contractor.

30. PUBLIC ENTITY CRIME INFORMATION STATEMENT AND DEBARMENT

Section 287.133(2)(a) of the Florida Statutes states: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list."

By signing this Agreement, Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a federal department or agency.
- (b) Have not, within a five-year period preceding the issuance of the Invitation To Bid (ITB) that led to the award of this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- (c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).
- (d) Have not within a five-year period preceding the issuance of the ITB that led to the award of this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.
- (e) Are not presently, nor have been within the last three (3) years, listed on the convicted vendor list.

Contractor agrees to notify School Board within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described in paragraphs (a) – (e) above, with respect to Contractor or its principals.

31. BACKGROUND CHECK

The Contractor agrees to comply with all requirements of sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes, and agrees that all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access to or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes and the Owner. This background screening will be conducted by the Owner in advance of the Contractor or its personnel providing any services under the conditions described in the previous sentence. The Contractor shall bear the cost of acquiring the background screening required by section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Contractor and its personnel. The parties agree that the failure of the Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling the Owner to terminate this Agreement immediately with no further responsibilities or duties to perform under this Agreement. The Contractor agrees to indemnify and hold harmless the Owner, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Contractor's failure to comply with the requirements of this section or with sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes. Contractor shall require each of Contractor's subcontractors on the Project to agree, in writing, to the provisions of this paragraph.

32. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.

33. NON-DISCRIMINATION

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.

34. COMPLIANCE WITH FEDERAL GRANT REQUIREMENTS

If made applicable by the use of federal grant funds in the Project or any other requirement as set out below, Contractor and its subcontractors shall comply with the following enactments, rules, regulations and orders:

- (a) Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).
- (b) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3).
- (c) Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts and subcontracts in excess of \$2,000 awarded by grantees and

subgrantees when required by Federal grant program legislation).

- (d) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts, which involve the employment of mechanics or laborers).
- (e) If the Federal award meets the definition of "funded agreement" under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (f) All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- (g) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- (h) They Byrd Amendment, 31 U.S.C. 1352, (the "Act" or "Byrd Amendment"), prohibits the use of appropriated funds by recipients of a "Federal contract" for purposes of influencing or attempting to influence federal officials in connection with a "Federal action," such as the awarding of a "Federal contract." The Act prohibits "contractors" from using appropriated funds for lobbying in connection with a grant, loan or cooperative agreement with a Federal agency. Furthermore, the Act requires the "contractor" to disclose to the Federal agency involved its lobbying activities connected with such "contract," grant or load when the "contract" amount exceeds \$100,000 regardless of whether the activities are funded with appropriated funds.

35. PUBLIC RECORDS ACT/CHAPTER 119 REQUIREMENTS

35.1 Public Records Act/Chapter 119 Requirements. Contractor agrees to comply with the Florida Public Records Act (Chapter 119, Florida Statutes) to the fullest extent applicable, and shall, if this engagement is one for which services are provided, by doing the following:

- (a) Contractor and its subcontractors shall keep and maintain public records required by the School Board to perform the service.
- (b) Contractor and its subcontractors shall upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a

reasonable time at a cost that does not exceed that provided in chapter 119, Florida Statutes or as otherwise provided by law;

- (c) Contractor and its subcontractors shall ensure that public records that are exempt or that are confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the School Board; and
- (d) Contractor and its subcontractors upon completion of the contract shall transfer to the School Board, at no cost, all public records in possession of the Contractor and its subcontractors or keep and maintain the public records required by the School Board to perform the service. If the Contractor and its subcontractors transfer all public records to the School Board upon completion of the contract, the Contractor and its subcontractors shall destroy any duplicate public records that are exempt or that are confidential and exempt from the public records disclosure requirements. If the Contractor and its subcontractors keep and maintain public records, upon completion of the contract, the Contractor and its subcontractors shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board, upon request from the School Board's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

The parties agree that if the Contractor and its subcontractors fail to comply with a public records request, then the School Board must enforce the Agreement provisions in accordance with the Agreement and as required by Section 119.0701, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, 817 BILL BECK BOULEVARD, KISSIMMEE, FL 34744, PHONE: (407) 870-4600, EMAIL: DANA.SCHAFFER@OSCEOLASCHOOLS.NET.

36. SMALL BUSINESS ENTERPRISE ("SBE") AND VETERAN BUSINESS ENTERPRISE ("VBE") PROGRAM PARTICIPATION GUIDELINES

- 36.1 SBE/VBE Program Compliance.** If so named in its bid, the Contractor shall enter into contract(s) with the SBE/VBE firms named in its Bid at the planned percentage of dollars, equaling or exceeding ten percent (10%) of the total contract revenues, which Owner relied upon in awarding this Agreement, subject only to the Owner's right to approve all sub-contractors, or vendors, and which becomes part of this Agreement. Contractor shall not breach any of its obligations with the SBE/VBE firms. In the event the Contractor desires to terminate or replace an SBE/VBE firm, the Contractor shall promptly notify the Owner of the impending termination, in writing, and detail the reason for such. Owner must approve the proposed termination and, if approved, provide written notification to the Contractor of such termination approval. The Contractor shall replace the terminated SBE/VBE firm with another SBE/VBE firm. If the Contractor is unable to enter into a contract with another SBE/VBE firm for performance of that part of the contract for which the terminated SBE/VBE firm was utilized, the Contractor shall provide the Owner with documentation in a form satisfactory to Owner to demonstrate good faith efforts of its attempts to secure a replacement of the terminated SBE/VBE firm with another

SBE/VBE firm. The Contractor shall also require all subcontractors submitting bids to comply with the SBE/VBE participation goal of ten percent (10%), providing valid proof of SBE/VBE certification, or providing evidence of good faith efforts, to be evaluated and accepted by the Owner. Accepted certifications include SBE certification with the School District of Osceola County, Florida; Local Developing Business (LDB) certification with the Greater Orlando Aviation Authority (GOAA) or Orange County Public Schools (OCPS); and/or VBE certification with the State of Florida Department of Management Services Office of Supplier Diversity (OSD). In the event the Contractor considers there is insufficient availability of SBE/VBE firms in specific trades or divisions of the Project, it shall notify the Owner in writing and shall request the Owner's waiver of the participation goal.

36.2 Reporting. With each Application for Payment Form submitted by the Contractor, as a condition precedent to its entitlement to payment, the Contractor shall also submit a monthly written report to the Owner concerning the status of all payments owed by the Contractor to each SBE/VBE firm as part of the Application for Payment. The Application for Payment Form submitted by the Contractor, as a condition precedent to its entitlement to payment, must be signed and dated by the Contractor's proposed SBE/VBE firm. Additionally, with Each Application for Payment Form submitted by the Contractor, as a condition precedent to its entitlement to payment, the Contractor shall also submit a monthly written report to the Owner concerning the status of all payments owed and paid by the Contractor to its various SBE/VBE subcontractors.

36.3 SBE/VBE Certification Updates. The Contractor shall be required to notify the Owner of any updates to participating SBE/VBE firm(s) certification(s) and shall resubmit an updated SBE/VBE Participation Form to the Owner every six (6) months during the Contract Time of this Agreement. Such document(s) shall also be submitted promptly if there is any change in ownership or control of the Contractor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement in counterparts each of which shall be treated as an original upon the terms and conditions above stated.

OWNER:
The School Board of Osceola County, Florida

CONTRACTOR:
[FIRM NAME]

By: _____
_____, Chair

By: _____

Date Approved: _____

Print Name: _____

Title: _____

Date: _____

ATTEST (WITNESS):

By: _____
Dr. Mark Shanoff, Superintendent

ATTEST (WITNESS):

By: _____

Print Name: _____

Title: _____

YEAR	FND	CNTR	PROJECT	FUNC	OBJT	PRG	S	AMOUNT
								NTE

The School District of Osceola County, Florida

EXHIBIT A

GENERAL TERMS AND CONDITIONS

ARTICLE 1
CONTRACT DOCUMENTS

- 1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the Contractor for execution of the Work shall be made by the Contractor at its cost and expense from the reproducible set(s) furnished by the Owner's Project Representative.
- 1.2 **Return Of Documents To Owner.** The Contractor shall return to the Owner's Project Representative the reproducible set(s), and all copies, of the Construction Documents upon Final Completion of the Work or termination of this Agreement.
- 1.3 **Electronic Media.** Unless otherwise specified in this Agreement, the Contractor may request that the Construction Documents required by the Contractor for the Work be furnished to it on electronic media. To the extent that such documents are available on electronic media, the Contractor will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the Contractor for execution of the Work shall be made by the Contractor at the Contractor's cost and expense. The Contractor shall return one copy of electronic Construction Documents to the Owner's Project Representative upon final acceptance of the Work or termination of this Agreement, whichever occurs first, and shall destroy all remaining electronic copies of the documents within its possession.
- 1.4 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum, which will be accepted.
- 1.5 **Owner Disclaimer Of Warranty.** The Owner has requested that its Design Professional prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
- 1.6 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents, which make up this Agreement, the following shall control:
- 1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;
- 1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
- 1.6.3 As between drawings and specifications, the requirements of the specifications shall govern;
- 1.6.4 As between this document and the plans, specifications, general conditions or general requirements, this document shall govern.

- 1.7 **Shop Drawings And Submittals.** Shop drawings and other submittals from the Contractor or its subcontractors and suppliers do not constitute a part of this Agreement.
- 1.8 **Contract Changes.** The Contractor understands and agrees that this Agreement cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Agreement can be accomplished only by written documents signed by the parties.

ARTICLE 2 CONTRACTOR'S REVIEWS AND EVALUATIONS

- 2.1 **Sufficiency of Construction Documents and Drawings.** The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner's Project Representative and the Design Professional any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.1.1 If the Contractor performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Design Professional and prior to receiving written authorization from the appropriate Design Professional to proceed, the Contractor shall be responsible for the consequences of such performance.
- 2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Contractor and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional failed to receive written notice before the Work was performed.
- 2.2 **Sufficiency Of Site.** Prior to signing this Agreement, the Contractor has
- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
 - (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Contractor has also

- (i) reviewed all available as-built and record drawings, plans and specifications; and
- (ii) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Agreement.

Claims resulting from the Contractor's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

**ARTICLE 3
CONTRACTOR'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

- 3.1 **Performance Of Work.** The Contractor shall perform and complete its obligations under this Agreement using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Agreement; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 3.1.1 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering.
- 3.1.2. All services rendered by the Contractor for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.
- 3.1.3 The Contractor shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
- 3.1.4 The Contractor understands and acknowledges that the Work referred to in this Agreement may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Contractor shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.
- 3.1.5 The Contractor shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Contractor damage, compromise or destroy any part of the Project or the Site, the Contractor shall be fully and exclusively responsible for and bear all costs associated therewith.
- 3.2 **Compliance With Governmental Requirements.** The Contractor shall:
- (a) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
 - (b) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and
 - (c) give all notices required of it by governmental authorities relating to the Project.
- 3.3 **Safety.** Safety shall be a prime concern of the Contractor at all times. The Contractor shall be solely responsible for and have control over the means, methods, techniques,

sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs.

- 3.4 **Concurrent Records.** The Contractor shall, concurrently with performance, maintain detailed records of activities on the Site.
- 3.5 **As-Built Drawings.** The Contractor shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Design Professional, the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Contractor shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.
- 3.6 **Bribes And Kick-Backs.** The Contractor shall not by any means:
- (a) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
 - (b) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;
 - (c) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
 - (d) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Contractor has a direct or indirect proprietary or other pecuniary interest.
- 3.7 **Quality Control And Testing.** The Contractor shall develop and implement a quality management program to insure quality construction. Unless otherwise specified in this Agreement, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The Contractor shall coordinate all tests and inspections required by the Construction Documents, and the Contractor shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.
- 3.8 **Incident Reporting.** The Contractor shall immediately notify the Owner's Project Representative and Design Professional, both orally and in writing, of the nature and details of all incidents, which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.
- 3.9 **Hazardous Substances.** The Contractor shall immediately notify the Owner's Project Representative and the Design Professional, both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental

contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the Contractor encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the Contractor shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner's Project Representative; and (v) take any other steps necessary to protect life and health.

3.10 Owner's Use Of And Access To The Site. The Contractor shall perform the Work so as not to interrupt any operations of the Owner on the Site.

3.10.1 The Contractor understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.

3.10.2 The Contractor shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Contractor understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.

3.10.3 The Contractor shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

3.11 Commissioning. The Contractor shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

3.11.1 The Contractor shall provide the Owner's Project Representative with operation and maintenance manuals and other operational documentation not less than twenty-eight calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

3.11.2 The Contractor shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Design Professional will attend and assist with such familiarization and training.

ARTICLE 4 CONTRACTOR'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES

4.1 Project Staffing. The Contractor shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.

4.1.1 The Contractor shall name a representative (the "Contractor's Representative") to serve as its primary communication contact with the Owner's Project Representative and the Design Professional.

- 4.1.2 The Contractor shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 4.1.3 The Contractor shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.
- 4.1.4 The Contractor shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 4.1.5 The Contractor shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 4.2 **Subcontractor / Supplier Contracts.** The Contractor shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Agreement. It is the intent of the Owner and the Contractor that the obligations of the Contractor's subcontractors and suppliers inure to the benefit of the Owner and the Contractor, and that the Owner be a third-party beneficiary of the Contractor's agreements with its subcontractors and suppliers.
- 4.2.1 The Contractor shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Agreement, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 4.2.2 The Contractor shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Agreement that are included by reference in its written contract with the Contractor, and that it will abide by those terms, conditions and requirements.
- 4.2.3 The Contractor's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Contractor's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Agreement, and upon request of the Owner, the Contractor's subcontractors and suppliers will perform services for the Owner.
- 4.3 **Owner/Design Professional Approval.** Contractor shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment) whether initially or as a substitute against whom the Owner or Design Professional may have reasonable objection. A subcontractor or other person or organization identified in writing to the Owner's Project Representative and Design Professional by the Contractor prior to the Notice of Award and not objected to in writing by the Owner's Project Representative or Design Professional prior to the Notice of Award will be deemed acceptable to the Owner and the Design Professional in most circumstances. Acceptance of any subcontractor, other person or organization by the Owner's Project Representative or the Design Professional shall not constitute a waiver of any right of the Owner's Project Representative or the Design Professional to reject

defective Work or Work not in conformance with the Contract Documents. If the Owner's Project Representative or the Design Professional after due investigation has reasonable objections to any subcontractor, other person or organization proposed by Contractor after the Notice of Award, the Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any subcontractor, other person or organization against whom it has reasonable objection. The Contractor shall not without the consent of the Owner's Project Representative and Design Professional, make any substitution of any subcontractor, other person or organization who has been accepted by the Owner's Project Representative and the Design Professional unless the Owner's Project Representative determines that there is good cause for doing so.

- 4.4 **Resolution Of Trade Disputes.** The Contractor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.
- 4.5 **Licensing.** Contractor's subcontractors and suppliers, and all persons performing work on the Project, shall be properly licensed by all applicable regulatory, governmental or administrative authorities having jurisdiction. Contractor shall request, collect and retain documentary evidence from such subcontractors, suppliers and other persons before the commencement of the work and provide such evidence to the Owner's Project Representative upon request.

ARTICLE 5 GOODS, PRODUCTS AND MATERIALS

- 5.1 **Quality Of Materials.** The Contractor shall furnish goods, products, materials, equipment and systems which:
- (i) comply with this Construction Agreement ;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
 - (iii) are new (unless otherwise specified or permitted) and without apparent damage;
 - (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
 - (v) are merchantable;
 - (vi) are free from defects; and
 - (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.
- 5.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Contractor shall so inform the Owner's Project Representative and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner's Project Representative. The Contractor shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all

warranties and guarantees, required by the Construction Documents for the Work.

- 5.3 **Unsuitable Materials.** The Contractor shall inform the Owner's Project Representative of goods, products, materials, equipment or systems which the Contractor knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner's Project Representative unless the Contractor, subcontractor, or supplier notified the Owner's Project Representative in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner's Project Representative and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner's Project Representative and Professional if such items should be defective or not as previously represented. Should the Contractor furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents, which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Contractor shall provide such at no increased cost to the Owner.
- 5.4 **Security For The Project.** The Contractor shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

ARTICLE 6 DOCUMENTS AND INFORMATION

- 6.1 **Information From Owner's Project Representative.** The Owner's Project Representative shall provide the Contractor with information reasonably necessary to assist the Contractor in performing its services including, if applicable:
- (i) the Site legal description and any required survey;
 - (ii) all written and tangible material in its possession concerning conditions below ground at the Site;
 - (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
 - (iv) the Owner's Project Representative's pertinent Project dates and key milestone dates.
- 6.2 **Resolution Of Questions.** The Contractor shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.
- 6.3 **Processing Of Documents.** When requested to do so by the Owner's Project Representative, the Contractor shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by Contractor; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.
- 6.4 **Sufficiency Of Owner Information.** The furnishing of information by the Owner to the Contractor shall not relieve the Contractor of responsibilities contained elsewhere in this Agreement to evaluate information and documents provided by the Owner and the Contractor shall timely notify the Owner's Project Representative in writing of any

additional information needed or services required from the Owner in order for the Contractor to perform the Work.

ARTICLE 7 SUBMITTALS

- 7.1 **Submittal Schedule.** The Contractor shall timely prepare and transmit to the designated Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The Contractor shall review and approve all submittals prior to submission to a Professional.
- 7.2 **Processing Of Submittals.** The Contractor shall in timely fashion review, approve if appropriate and forward submittals to the Design Professional for review and approval along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.
- 7.2.1 **A Professional is responsible to the Owner, but not to the Contractor, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Agreement.**
- 7.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Professional shall not relieve the Contractor from complying with this Agreement, including all plans and specifications, except as changed by Change Order.

ARTICLE 8 CONTRACTOR'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 8.1 **Rejection And Correction Of Work In Progress.** During the course of Project, the Contractor shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 8.1.1 The Contractor shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.
- 8.1.2 The Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Contractor's correction or removal of rejected Work.
- 8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Contractor shall, if notified to do so by the Owner's Project Representative or a Professional, uncover the designated portion for observation and then replace it.
- 8.2.1 If the designated portion of the Work was covered contrary to the request of the

Owner's Project Representative or the Professional, or to requirements specifically expressed in the Construction Documents, the Contractor shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

- 8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner's Project Representative or the Professional that it remain uncovered, the Contractor shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

ARTICLE 9 CHANGE ORDERS AND CHANGES TO THE WORK

- 9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules.
- 9.1.1 With respect to such requests for changes by the Contractor, the Contractor shall prepare and submit change order requests to the designated Professional.
- 9.1.2 With respect to requests for changes by parties other than the Contractor, the Contractor shall promptly review and respond to change order requests submitted by the Design Professional.
- 9.1.3 When requested to do so, the Contractor shall prepare and submit to the Design Professional; drawings, specifications or other data in support of a change order request.
- 9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.
- 9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Contractor to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Agreement, and the Contractor, upon written direction from the Owner, shall proceed with such change.
- 9.3 **Design Professional-Directed Changes.** The Design Professional, without the Owner's prior approval, may authorize or direct the Contractor to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Contractor shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Contractor.
- 9.4 **Administration Of Changes.** The Design Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 9.5 **Compensation For Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Contractor, the Contractor shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated Design Professional.

- 9.5.1 If price quotations for change order requests are determined by the Design Professional to be unreasonable, the Contractor shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Design Professional determines the quotation is unreasonable, the Owner's Project Representative may require the subject Work be performed on a time and material basis.
- 9.5.2 The Contractor and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Agreement, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.
- 9.5.3 It is the responsibility of the Contractor to review and approve all pricing of additional work required of its subcontractors and suppliers.
- 9.6 **Performance Of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.
- 9.7 **Disputes Regarding Changes.**
- 9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner's Project Representative so directs. No claim shall be prejudiced by performance of the Work so long as the Owner's Project Representative is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner's Project Representative recites the reasons for its dispute in the written notice. Failure to notify the Owner's Project Representative in writing shall constitute a waiver of any claim resulting from the change.
- 9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Contract Sum or time.
- 9.8 **Necessity For Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Contractor understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 10 FINANCIAL CLAIMS AND LIENS

- 10.1 **Notification Regarding Liens.** The Contractor shall immediately notify the Owner and Design Professional, both orally and in writing, of the nature and details of any claimed mechanics' liens, construction liens, Contractor's trust fund claims, or claims of any type

made by anyone against the Owner, the Design Professional, the Contractor or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

**ARTICLE 11
OWNER'S CONSULTANT(S), DESIGN PROFESSIONAL AND
CONSTRUCTION ADMINISTRATION**

11.1 **Owner's Design Professional.** Unless otherwise directed by the Owner, Design Professional shall act as the Owner's representative from the effective date of this Construction Agreement until one year from the date of achievement of Substantial Completion.

11.1.1 The Design Professional will be the Owner's representative during performance of the Work and will consult with and advise the Owner's Project Representative on all design and technical matters.

11.1.2 The Design Professional will act as initial interpreter of the requirements of this Agreement and as the Owner's advisor on claims.

11.2 **Owner's Designated Representative** The Owner hereby designates the School District's Superintendent or designee, as its representative with the authority to approve in writing changes contemplated in this Agreement where the monetary impact is less than \$25,000.00 or 10% of the GMP amount, whichever is less. This limit applies to each change, and a change may not be divided into separate changes to avoid the requirement of Owner approval. Subject to the above limitations, the Owner's Designated Representative is hereby delegated and assumes the Owner's responsibilities and authorities in the administration of this Agreement.

Owner's Project Representative The Owner hereby designates the Chief Facilities Officer or designee, as its representative with the authority to assign the responsibility of managing the Project to a School District Project Manager (hereinafter "Owner's Project Representative"). The Owner's Project Representative is hereby delegated and assumes the Owner's responsibilities and authorities in the administration of this Agreement ONLY as noted herein.

11.3 **Professional Site Visits.** The Design Professional will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Agreement, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.4 **Professional Rejection Of Work.** The Design Professional may disapprove or reject Work which does not comply with (i) this Agreement including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.5 **Professional Evaluations.**

11.5.1 The Design Professional will review and evaluate the results of all inspections, tests and written reports required by this Agreement and by any governmental entity having or asserting jurisdiction over the Project. The Design Professional will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by

the Design Professional. The Design Professional will promptly reject Work which does not conform to and comply with testing requirements.

- 11.5.2 The Design Professional may require inspection or testing of any Work in addition to that required by this Agreement or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Design Professional will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Design Professional.
- 11.6 **Professional Submittal Activities.** The Design Professional will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Agreement; and (iii) the Owner's budgeted Total Project Construction Cost. The Design Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Contractor remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.7 **Professional Interpretations.** The Design Professional will, when requested to do so in writing by the Contractor, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. The Design Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Agreement.
- 11.8 **Professional Change Order Activities.** The Design Professional will consult with and advise the Owner's Project Representative concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.
- 11.9 **Professional Pay Application Activities.** The Design Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Contractor and shall authorize payment by the Owner to the Contractor in writing. After the Work is determined to be finally complete and the Professional determines that the Contractor has completed the Work, the Professional will determine whether the Contractor is entitled to final payment, and if so will so certify to the Owner in writing.
- 11.10 **Professional Relationship To Contractor.** The duties, obligations and responsibilities of the Contractor under this Agreement shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Design Professional. The Contractor shall not be a third-party beneficiary of any agreement by and between the Owner and the Design Professional. The duties of the Contractor to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of the Design Professional to the Owner.

**ARTICLE 12
INSPECTION, CORRECTION OF WORK,
AND PROJECT CLOSE OUT**

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have

occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.

12.1.1 When the Contractor believes that the Work is substantially complete, it shall notify the Owner's Project Representative and the Design Professional that its Work is ready for a Substantial Completion inspection.

12.1.2 At or prior to the Substantial Completion inspection, the Contractor will prepare and furnish to the Design Professional a Contractor's Completion List, which at a minimum must:

- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the Contractor responsibility for security, utilities, damage to the Work and insurance;
- (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
- (iii) contain signature lines for the Owner, the Contractor and the Design Professional.

12.1.3 Upon receipt of notification from the Contractor the Design Professional will coordinate with the Owner's Project Representative and the Contractor a date for inspection of the Work to determine whether the Work is substantially complete.

12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Design Professional will:

- (i) inspect the Work;
- (ii) list additional items to be completed or corrected; and
- (iii) determine, in consultation with the Owner's Project Representative, whether Substantial Completion of the Work has occurred.

12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.

12.1.6 On or prior to the required date of Substantial Completion, the Contractor shall deliver to the Design Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Design Professional will obtain and review Substantial Completion documentation and items, and will inform the Contractor of any deficiencies.

12.1.7 When the Owner's Project Representative, the Contractor and the appropriate Design Professional agree that the Work has passed the Substantial Completion inspection and the Contractor has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion

and correction.

12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the Contractor has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner's Project Representative by the Contractor.

12.2.1 When the Contractor believes the Work is finally complete, the Contractor shall notify the Owner's Project Representative and the Design Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the Contractor, the Design Professional will coordinate with the Owner's Project Representative and the Contractor a date for inspection of the Work to determine whether the Work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Design Professional will:

- (i) inspect the Work;
- (ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
- (iii) determine whether the Work complies with (a) this Agreement; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- (v) determine, in consultation with the Owner's Project Representative, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the Contractor shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

12.2.5 On or prior to the date of Final Completion, the Contractor shall deliver to the Design Professional the following Final Completion close-out documentation and items:

- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
- (ii) two (2) sets of as-built drawings and markups;
- (iii) certification and affidavit that all insurance required of the Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;

- (iv) written consent of the surety(ies), if any, to final payment;
- (v) full, final and unconditional waivers of mechanics or construction liens, releases of Contractor's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- (vi) full, final and unconditional certification and affidavit that all of the Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The Design Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Contractor, and will immediately inform the Contractor about any deficiencies and omissions.

ARTICLE 13 CONTRACTOR'S WARRANTIES AND GUARANTEES

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Agreement, the Contractor, upon request by the Owner's Project Representative or the Design Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

13.1.1 The Contractor shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner's Project Representative, the appropriate Design Professional, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the Contractor fail to promptly correct any failure or defect, the Owner's Project Representative may take whatever actions it deems necessary to remedy the failure or defect and the Contractor shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Contractor's failure to correct the failure or defect.

13.2 **Express Warranties And Guarantees – Contractor.** In addition to the warranties and

guarantees set forth elsewhere herein, the Contractor expressly warrants and guarantees to the Owner:

- (i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
- (iii) that all management, supervision, labor and services required for the Work shall comply with this Agreement and shall be and are performed in a workmanlike manner.

13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Contractor shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Contractor in a form identical to the warranties, guarantees and other undertakings set forth in this Agreement, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Contractor.

13.4 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Contractor's obligations under this Agreement. Paragraph 13.1 relates only to the Contractor's specific obligations with respect to the Work, and has no relationship to the time within which the Contractor's contractual obligations under this Agreement may be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.

13.6 **Commencement Of Obligations.** Unless otherwise specified, all of the Contractor's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

ARTICLE 14 OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

14.1 **Timely Compensation Of Contractor.** The Owner shall timely compensate the Contractor in accordance with this Agreement.

14.2 **Payment For Testing.** Unless otherwise required to be provided by the Contractor in its scope of services, Owner shall secure and pay for all Project testing.

14.3 **Owner Review Of Documents.** The Owner's Project Representative shall review

documents prepared by the Contractor in a timely manner and in accordance with schedule requirements. Review by the Owner's Project Representative shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Contractor of any of its responsibilities.

14.4 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Contractor, for any of the foregoing purposes, be deemed the agent of the Owner.

14.5 **Owner's Utilities.** The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The Contractor shall be responsible to provide and pay for connections to, extensions from and means of using these utilities.

14.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for Contractor's field offices.

14.5.2 Acceptance by the Contractor of the use of the Owner's water, gas and electrical energy constitutes a release from the Contractor to the Owner of all claims and liability for any damages or losses which may be incurred by the Contractor as a result of water, gas and electrical energy outages or voltage variations or surges.

14.6 **Statements Of Owner's Capacity.** The Owner's Project Representative, upon reasonable written request, shall furnish to the Contractor in writing statements of:

- (i) the record legal title to the Site on which the Project is located and the Owner's interest therein at the time of execution of this Agreement; and
- (ii) the Owner's financial capacity to pay for the Project.

ARTICLE 15 CONTRACTOR'S COMPENSATION

15.1 **Unit Prices.** If any portion of the Contract Sum is determined by the application of unit prices, the number of units contained in the Contractor's Compensation Schedule is an estimate only, and the compensation to the Contractor shall be determined by the actual number of units incorporated in, or required by, the Work.

15.2 **Schedule Of Values.** The Contractor shall prepare and present to the Owner's Project Representative and the Design Professional the Contractor's Schedule of Values, apportioning the different elements of the Work for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in the format and with such detail and supporting information, requested by the Design Professional or Owner's Project Representative. The Contractor shall not imbalance or artificially inflate any element of its Schedule of Values. Upon the Design Professional and Owner Project Representative's acceptance, the Schedule of Values shall be used to process and pay the Contractor's payment requests. The Schedule of Values shall not be changed without written change order authorized by the Owner.

15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the Contractor shall invoice the Owner and the Owner shall pay the Contractor the Contract Sum.

15.3.1 At least every thirty calendar days after commencement of performance, but no more frequently than once a month, the Contractor shall submit invoices to the Design Professional requesting payment for labor and services rendered during the preceding thirty calendar days. The Owner's designated Design Professional may require the Contractor to use a specific form for applications for payment, which Contractor shall use. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or Design Professional requests and shall at a minimum state:

- (i) the total Contract Sum;
- (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner's Project Representative), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
- (iii) a breakdown of the various phases or parts of the Work as related to the Contract Sum;
- (iv) the value of the various phases or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage;

and shall also have attached such Release and Affidavit and other documentation verifying the Contractor's payment to subcontractors and suppliers as the Owner's Project Representative or Design Professional may request. The Release and Affidavit shall be substantially in the form of the Release and Affidavit incorporated in the bid solicitation documents of this ITB and attached hereto as Exhibit C.

15.4 **Payment Procedures.**

15.4.1 The Design Professional will review the Contractor's applications for payment, including such accompanying data, information and schedules as the Design Professional requires, to determine the amounts due to the Contractor and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Contractor in writing. Such authorization will constitute the Design Professional's certification to the Owner that

- (i) the Work described in the Contractor's invoice has progressed to the level indicated and has been performed in accordance with the Agreement;
- (ii) all necessary and appropriate lien waivers have been submitted; and
- (iii) the amount requested is currently due and owing to the Contractor.

15.4.2 In the case of unit price work, the Design Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.4.3 The Contractor shall process the invoices and deliver them to the Facilities Division

Accounting Department, as the single agent/point of contact, by the 20th of the month.

15.5 **Owner's Right To Refuse Payment.** The Design Professional's approval of the Contractor's invoice shall not preclude the Owner from exercising any of its remedies under this Agreement. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner's Project Representative shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- (i) the Contractor's failure to perform the Work in compliance with the requirements of this Agreement or any other agreement between the parties;
- (ii) the Contractor's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the Contractor's performance of the Work at a rate or in a manner that, in the Owner's Project Representative's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) the Contractor's failure to use funds previously paid the Contractor by the Owner, to pay the Contractor's Project-related obligations including, but not limited to, the Contractor's subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against the Owner or its property;
- (vi) loss caused by the Contractor or the Contractor's subcontractors, or suppliers; or
- (vii) the Contractor's failure or refusal to perform any of its obligations to the Owner.

15.6 **Contractor's Right To Refuse Performance For Non-Payment.** If within thirty calendar days from the Payment Date the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment after first providing fourteen calendar days written notice to the Owner's Project Representative of its intent to cease work.

15.7 **Correction of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner's Project Representative shall notify the Contractor in writing of such defect or impropriety. Any disputed amounts determined by the Owner's Project Representative to be payable to the Contractor shall be due thirty calendar days from the date the dispute is resolved.

15.8 **Invoice Warranties And Guarantees.** The Contractor expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Contractor, whichever occurs first;

- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Contractor, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor, or its subcontractors or suppliers.

- 15.9 **Contractor's Signature.** The signature of the Contractor on any invoice constitutes the Contractor's certification to the Owner that (i) the Contractor's services listed in the invoice have progressed to the level indicated and have been performed as required by this Agreement; (ii) the Contractor has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.
- 15.10 **Compensation Of Contractor's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the Contractor shall pay each of its subcontractors and suppliers out of the amount received by the Contractor on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Contractor on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Contractor's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Contractor and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Contractor fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.
- 15.11 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Contractor within fourteen calendar days of Design Professional's execution of a final approval for payment.

ARTICLE 16 SCHEDULE REQUIREMENTS

- 16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.
- 16.1.1 Unless otherwise directed and approved by the Owner's Project Representative, the Contractor shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.
- 16.1.2 The Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for

review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.

- 16.1.3 By reviewing the Construction Schedule, the Owner and Design Professional do not assume any of the Contractor's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.
- 16.1.4 The Contractor shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Contractor shall discuss the status of the Work weekly with the Design Professional, so that proper overall management may be provided.
- 16.1.5 The Contractor shall periodically and in all instances when the Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.
- 16.2 **Delay In Performance.** If at any time the Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, the Contractor shall (i) immediately notify the Owner's Project Representative and the Design Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.
- 16.3 **Modifications To Time For Performance.** The Contractor shall determine and promptly notify the Owner's Project Representative and the Design Professional in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner's Project Representative and Design Professional.
- 16.4 **Early Completion.** The Contractor may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Contractor's sole convenience and shall not create any additional Contractor rights or Owner obligations under this Agreement, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Contractor any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Contractor any compensation should the Owner cause the Contractor not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.

- 16.5 **Modification Dates Of Substantial Completion Or Final Completion.** The Contractor may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the Contractor's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Agreement to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Contractor's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.
- 16.6 **Document Review.** The Contractor shall provide documents to the Owner's Project Representative and Design Professional for review in accordance with schedule requirements and with sufficient lead time to allow the Owner's Project Representative and Design Professional reasonable time for review.

**ARTICLE 17
LIQUIDATED DAMAGES**

- 17.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Agreement and that the Owner will incur damages if the Work is not completed on time. The Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.
- 17.2 **Failure To Timely Achieve Completion.** Time is of the essence in the performance of the Work under the Contract Documents. The Owner and Contractor agree that the losses suffered by Owner, if Substantial Completion of the Work is not achieved, are not ascertainable at this time. Contractor acknowledges and agrees that, since time is of the essence, the Owner will suffer financial and other losses if Substantial Completion of the Work is not achieved within the Contract Time, as said Contract Time may be adjusted pursuant to the terms of the Contract Documents. Should the Contractor fail to achieve Certificate of Substantial Completion of the Work within the Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of **\$250.00** for each calendar day thereafter until substantial completion is achieved and **\$250.00** for each calendar day thereafter until Certificate of Final Inspection is achieved. Should the Contractor achieve Certificate of Substantial Completion of the Work within the Contract Time but fail to achieve Certificate of Final Inspection of the Work within its Contract Time, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, the sum of **\$250.00** for each calendar day thereafter until Certificate of Final Inspection of the Work is achieved. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Contractor fails to achieve Substantial Completion or Final Inspection of the Work within the Contract Time. Further, the parties acknowledge that it would be extremely difficult, if not impossible, to ascertain Owner's actual damages with any degree of certainty in the event Contractor fails to achieve either Substantial Completion or Final Inspection of the Work within the Contract Time.
- 17.3 **Compensable Delay.** If the Contractor is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Design Professional; (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines may justify the compensation of the Contractor for the delay, the

Contractor's compensation shall be equitably adjusted to cover the Contractor's actual and direct increased costs attributable to such delay.

- 17.4 **Excusable Delay.** If the Contractor is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Design Professional; (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the Contractor; (vi) unavoidable casualties; (vii) causes beyond the Contractor's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the Contractor or by any cause which the Contractor could reasonably control or circumvent; (b) the Contractor would have otherwise been able to timely perform all of its obligations under this Agreement but for such delay; and (c) immediately but not later than seven calendar days after the beginning of any such delay the Contractor gives notice of its delay claim to the Owner's Project Representative.
- 17.5 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Contractor will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.
- 17.5.1 If and when the Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.
- 17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Contractor or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

- 18.1 **Notification Regarding Unusual Conditions.** If (i) the Contractor encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Contractor, the Contractor shall promptly, but in no event later than three calendar days after first observance of the conditions, notify the appropriate Design Professional and the Owner's Project Representative before conditions are disturbed and give the Design Professional or the Owner's Project Representative opportunity to observe the condition in its undisturbed state.
- 18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Contractor's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.
- 18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen calendar days from the date of observation of the changed conditions.

18.1.3 The Contractor's failure to notify the Design Professional and Owner's Project Representative as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

ARTICLE 19 CONTRACTOR'S RECORDS

- 19.1 **Preparation Of Records.** The Contractor shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.
- 19.2 **Retention Of Records.** The Contractor shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.
- 19.2.1 The Contractor shall maintain substantiating records for four years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Contractor receives notification of a dispute or the commencement of litigation regarding the Project within this four-year period, the Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.
- 19.2.2 The Contractor shall, upon seven days' request from the Owner, secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.
- 19.3 **Access To Records.** Upon the request of the Owner, the Contractor shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Contractor's records at the copying party's reasonable expense, within adequate work space at the Contractor's facilities. Failure by the Contractor to supply substantiating records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Agreement.

ARTICLE 20 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

- 20.1 **Nature And Use Of Information.** All information, documents, and electronic media

furnished by the Owner to the Contractor (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Contractor; and (v) shall not be used by the Contractor on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the Contractor a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

- 20.2 **Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the Contractor for the Project are the sole property of the Owner free of any retention rights of the Contractor. The Contractor hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Contractor for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 20.3 **Disclosure Of Information.** The Contractor shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Agreement.
- 20.4 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Contractor shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.
- 20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21 GENERAL INSURANCE REQUIREMENTS

- 21.1 **General Insurance Requirements.**
- A. The Contractor shall deliver the required proofs of insurance to the Owner prior to the commencement of any Work, and in no event any later than 10 days after the execution of this Agreement.
 - B. The Contractor shall, throughout the performance of its services under this Agreement and throughout the term of this Agreement maintain and provide to the Owner the insurance coverages listed in this Article. The insurance policies shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. The Contractor shall provide insurance that may not be reduced, terminated, or cancelled unless 30 days prior written notice thereof is furnished to the Owner. Certificates of insurance and copies of all policies, as required by the Owner, shall be furnished to the Owner's Project Representative within 10 days after the execution of this Agreement. In the event of any cancellation or reduction in insurance coverage, the Contractor shall obtain substitute coverage, without any lapse of coverage whatsoever. The insurance policies shall name the Owner, the Owner's representatives, and the officers, directors, agents, employees and assigns of the Owner as additional insureds (except for the professional liability and worker's compensation insurance).
 - C. The insurance required from the Contractor in this Article shall include all major

divisions of coverage, and shall be on a commercial general basis including premises and operations (including X-C-U), Independent Contractor Hired Products and Completed Operations, and Owned, Non-owned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or others set forth in the Contract Documents, whichever is greater. All insurance shall be written on an occurrence basis, unless the Owner approves in writing coverage on a claims-made basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment.

- D. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.
- E. Contractor agrees to provide and maintain at all times during the term of this agreement and any renewals, without cost to the School Board, policies of insurance against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services, and/or obligations of the Contractor under the terms and conditions of this agreement.

The minimum requirements for insurance coverage shall be as follows:

- F. Contractor shall take special notice that the Board shall be named as an additional insured under the General Liability policy. The insurance policies shall be issued by companies licensed to do business in the State of Florida and grant The School Board of Osceola County thirty (30) days of advanced written notice of a cancellation, expiration or any material change in the specified coverage. The insurance companies are required to have a minimum rating of A- or better and a financial size category of VI or higher in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. All policies must remain in effect during the performance of the agreement.

G. Commercial General Liability Insurance

- 1. Each Occurrence
 - (a) One Million Dollars (\$1,000,000)
- 2. General Aggregate
 - (a) One Million Dollars (\$2,000,000)

H. Automobile Liability (if applicable) – Any Auto Combined Single Limit

- (a) Two Million Dollars (\$2,000,000)

- I. Professional Liability Insurance (if Design/Build), with limits of not less than \$1,000,000 per occurrence or claim, and \$5,000,000 policy aggregate.

If this policy is written on a claims-made basis, the policy shall include an endorsement, certificate, or other evidence that coverage extends two years beyond the performance period of the contract.

- J. Workers' Compensation – The contractor shall maintain statutory workers' compensation for all its employees who will be engaged in the performance of this contract, and, in case any work is sublet, the contractor shall require the subcontractors similarly to provide Workers' Compensation Insurance as required by FS 440 for all the latter's employees unless such employees are covered by the

protection of the contractor.

State Statutory Limits

K. Employer's Liability Insurance

- Each Accident \$1,000,000
- Disease-Each Employee \$1,000,000
- Disease-Policy Limit \$1,000,000

Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall supply a copy of said notice.

Requirements for Respondents that qualify for an exemption under the Florida Worker's Compensation law in Chapter 440 Florida Statutes are detailed below: Incorporated or unincorporated firms with less than four employees shall be required to sign a Hold Harmless Agreement relieving the School Board of liability in the event they and/or their employees are injured while providing goods and/or services to the School Board.

Incorporated or unincorporated firms with four or more employees shall be required to provide a copy of their "Notice of Election to be Exempt", along with valid proof of coverage for non-exempt employees.

L. Builder's Risk – (if applicable) Course of Construction insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

M. Contractor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

Certificate of Insurance: A certificate of insurance indicating that the respondent has coverage in accordance with the requirements herein set forth shall be furnished by the respondent to the School Board Representative prior to the execution of the contract and annually upon renewal thereafter. Respondent agrees that School Board will make no payments pursuant to the terms of the contract until all required proof or evidence of insurance have been provided to the School Board Representative. Respondent agrees that the insurer shall waive its rights of subrogation, if any, against the School Board. These shall be completed by the authorized Resident Agent and returned to the Purchasing Office. This certificate shall be dated and show:

- (a) The name of the insured respondent, the specified job by name, name of the insurer, the number of the policy, its effective date and its termination date.
- (b) Statement that the Insurer will mail notice to the School Board at least thirty (30) days prior to any material changes in provisions or cancellation of the policy.
- (c) School Board shall be named as an additional insured on General Liability Insurance as evidenced by the endorsement.

Loss Deductible Clause: The School Board shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the

respondent and/or subcontractor providing such insurance.

- N. The Contractor shall procure property insurance for any portion of the Work stored off Site or in transit, and the cost for such shall be borne by the Contractor.
- O. Boiler and Machinery Insurance. The Contractor shall purchase and maintain boiler and machinery insurance if applicable to the Contract Documents. This insurance shall remain in full force and effect until final acceptance of the insured items by the Owner.
- P. Performance and Payment Bonds. The Contractor shall furnish bonds covering the faithful performance of the Agreement and payment of any and all obligations arising under the Agreement as required by Florida law. Upon request, the Contractor shall furnish a copy to any person or entity requesting a copy. Such bonds shall be in conformance and compliance with Section 4.2, State Requirements for Educational Facilities, and shall contain the information and provisions set forth in the referenced section. The Contractor shall record the performance and payment bonds in the public records of Osceola County, Florida. The Contractor shall provide the recorded copy of the bonds to the Owner's Project Representative.
- Q. Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Contractor, its subcontractors, sub-subcontractors, material suppliers, employees, or agents to the Owner or others. Any remedy provided to the Owner, or the Owner's officers, employees, agents or assigns, by the insurance shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise.
- R. No Waiver by Approval/Disapproval. Neither approval by the Owner nor failure to disapprove the insurance furnished by the Contractor shall relieve the Contractor of its full responsibility to provide the insurance as required by this Agreement.

ARTICLE 22 GENERAL BOND REQUIREMENTS

- 22.1 **General Bond Requirements.** The Contractor shall furnish bonds covering the faithful performance of the Agreement and payment of any and all obligations arising under the Agreement as required by Florida law, consistent with the form attached hereto as Exhibit D. The Contractor shall deliver the required bonds to the Owner's Project Representative prior to the commencement of any Work, and in no event any later than 5 days after the execution of this Agreement. Upon request, the Contractor shall furnish a copy to any person or entity requesting a copy. Such bonds shall be in conformance and compliance with Section 4.2, State Requirements for Educational Facilities, and shall contain the information and provisions set forth in the referenced section. The Contractor shall record the performance and payment bonds in the public records of Osceola County, Florida. The Contractor shall provide the recorded copy of the bonds to the Owner's Project Representative.

ARTICLE 23 OWNER'S RIGHT TO STOP WORK

- 23.1 **Cease And Desist Order.** If the Contractor fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Agreement, the Owner may, by written notice, order the Contractor to cease and desist in performing the Work or any portion of the Work until the cause for the order has been

eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

23.1.1 The Contractor shall not be entitled to an adjustment in the time for performance or the Contract Sum under this clause since such stoppages are considered to be the fault of the Contractor.

23.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or others.

23.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Contractor fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another Contractor, and the Contractor shall be responsible for the cost of performing such Work by the Owner.

23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

ARTICLE 24 TERMINATION OR SUSPENSION OF AGREEMENT

24.1 Termination For Cause By Owner.

24.1.1 The Owner may terminate this Agreement for cause if the Contractor materially breaches this Agreement by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Agreement as determined by the Owner's Project Representative, or as otherwise defined elsewhere herein, or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Contractor.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner's Project Representative may give written notice to the Contractor setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Contractor fails to initiate the cure or if the Contractor fails to expeditiously continue such cure until complete, the Owner may give written notice to the Contractor of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner's Project Representative deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner's Project Representative deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Contractor;
- (v) directly pay the Contractor's subcontractors and suppliers compensation due to them from the Contractor;
- (vi) finish the Work by whatever method the Owner's Project Representative may deem expedient; and
- (vii) require the Contractor to assign the Contractor's right, title and interest in any or all of Contractor's subcontracts or orders to the Owner.

24.1.3 If the Owner terminates the Agreement for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Contractor, the Contractor's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Contractor the Owner's damages resulting from the termination.

24.1.4 If the Owner terminates this Agreement for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

24.2 Termination For Cause By Contractor.

24.2.1 The Contractor may terminate this Agreement for cause if the Owner materially breaches this Agreement by:

- (i) refusing, failing or being unable to make prompt payment to the Contractor without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any

Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Agreement or any other agreement between the Owner and the Contractor.

24.2.2 Upon the occurrence of any of the events described in Paragraph 24.2.1, the Contractor may give written notice to the Owner's Project Representative setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within seven calendar days, the Contractor, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

24.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Contractor terminating this Agreement or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Contractor shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

24.4 **Contractor's Compensation When Contractor Terminates For Cause Or Owner Terminates For Convenience.** If this Agreement is (i) terminated by the Contractor pursuant to Paragraph 24.2; (ii) terminated by the Owner pursuant to Paragraph 24.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 24.3, the Owner shall pay the Contractor specified amounts due for Work actually performed prior to the effective termination date. The Owner may agree to additional compensation, if any, due to the Contractor.

24.5 **Contractor's Compensation When Owner Terminates For Cause.** If this Agreement is terminated by the Owner for cause pursuant to Paragraph 24.1, no further payment shall be made to the Contractor until Final Completion of the Project. At such time, the Contractor shall be paid the remainder of the Contract Sum less all costs and damages incurred by the Owner as a result of the default of the Contractor, including liquidated damages applicable thereto. The Contractor shall additionally reimburse the Owner for any additional costs or expenses incurred.

24.6 **Limitation On Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the Contractor shall not exceed the Contract Sum, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Agreement, and shall in no event include duplication of payment.

24.7 **Contractor's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if this Agreement is terminated, the Contractor shall, unless notified otherwise by the Owner,

- (i) immediately stop work;
- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Contractor has.

24.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give

rise to a duty on the part of either the Owner or the Contractor to exercise that right for the benefit of the Owner, the Contractor or any other persons or entities.

- 24.9 **Limitation On Termination Claim.** If the Contractor fails to file a claim within one year from the effective date of termination, the Owner shall pay the Contractor only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 25 PERFORMANCE DURING DISPUTE RESOLUTION

- 25.1 **Performance During Dispute Resolution.** The Owner and the Contractor agree that pending the resolution of any dispute, controversy, or question, the Owner and the Contractor shall each continue to perform their respective obligations without interruption or delay, and the Contractor shall not stop or delay the performance of the Work.

ARTICLE 26 DAMAGES AND REMEDIES

- 26.1 **Contractor's Repair.** The Contractor shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Agreement, or any other applicable warranty or guarantee.
- 26.2 **Contractor's Reimbursement.** The Contractor shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Contractor's failure to substantially perform in accordance with the terms of this Agreement; (ii) deficiencies or conflicts in the Construction Documents attributable to the Contractor or of which the Contractor was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Agreement or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Contractor.
- 26.3 **Indemnity and Hold Harmless.** The Contractor shall hold harmless and indemnify the Owner, its agents and employees from and against any and all losses, damages, claims made by third parties, liabilities to third parties, litigation and other matters which may arise from, be caused, or result during or as a result of any act or omission of the Contractor, the performance of the Agreement, or breach of performance of the Agreement by the Contractor, or the performance or failure of performance of any product or service furnished by the Contractor under this Agreement with the Owner, or in any way or manner whatsoever related to any duty imposed on the Contractor related to, occurring during, or rising from the construction and subsequent occupancy of the Project. This hold harmless and indemnification provision shall include a duty to defend the Owner and to pay all reasonable attorneys' fees and expenses, including administrative and on appeal, incurred by the Owner in the defense of any matter covered by this provision. This hold harmless and indemnity shall survive the termination or expiration of this Agreement. The parties acknowledge that \$100.00 of the Owner's first payment to the Contractor shall be in consideration for this indemnification. This indemnity shall not be deemed to include matters which may be caused or result from an act or omission of the Owner. Nothing in this Agreement shall be interpreted or construed as an agreement on the part of the Owner to indemnify or hold harmless any party, including, but not limited to, the Contractor, the Design Professional, Subcontractors, Trade Contractors, or all other lower tier Contractors (Sub-Subcontractors).
- 26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Contractor shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other

consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Design Professional in writing. If the Contractor has reason to believe the use of a required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly given to the Owner.

- 26.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Agreement contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Agreement or by law.
- 26.6 **Waiver Of Damages.** The Contractor shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 26.7 **Interest.** The Owner is entitled to interest at the legal rate for judgments in the State of Florida on all amounts due from the Contractor that remain unpaid thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise.

ARTICLE 28 MISCELLANEOUS PROVISIONS

- 28.1 **Integration.** This Agreement represents the entire and integrated agreement between the Owner and the Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Agreement may be amended only by written instruments signed by both the Owner and the Contractor, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.
- 28.2 **Severability.** In the event the provisions of this Agreement are determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.
- 28.3 **Waiver.** No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations under this Agreement shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.
- 28.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Contractor with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of the Contractor's obligations.
- 28.5 **Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Contractor.
- 28.6 **Survival.** All provisions of this Agreement which contain continuing obligations shall

survive its expiration or termination.

ARTICLE 29 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

Contractor: An entity, including but not limited to a Contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to an Agreement.

Contract Sum: The dollar amount for which a Contractor agrees to perform the Work set forth in the Agreement.

Construction Documents: The Construction Documents include all drawings, plans and specifications developed by the Design Professional during the performance of the Agreement, and details the requirements for the construction of the project. The Construction Documents also include all change orders, revisions, addenda and other information developed during the construction phase of the project.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Construction Agreement: A written agreement between the Owner and a Contractor for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

Contract For Professional Services: A written agreement between the Owner and a Design Professional for provision of services and related items required to design or engineer all or part of a Project.

Final Completion: The stage of construction when the Work has been completed in accordance with the Agreement and the Owner's Project Representative has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Design Professional: An entity, including but not limited to an architect, mechanical engineer, electrical engineer, plumbing engineer, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services. The entity that is assigned as the Design Professional may also include any subconsultants the Design Professional has contracted with for the design of the project.

Project: A planned construction project.

Project Design Schedule: The timetable that sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Contractor.

DRAFT

The School District of Osceola County, Florida

EXHIBIT B

Scope of Work

Work to performed under this contract shall include all labor, materials (except those indicated as provided by Owner), equipment necessary to provide the completion of the additional construction services as shown in the drawings provided by [REDACTED] (Attachment B).

ADD SCOPE HERE



The School District of Osceola County, Florida

EXHIBIT C

Payment and Performance Bonds

Within five (5) business days after the execution of this agreement, Contractor shall provide Owner's Project Representative with Payment and Performance Bonds, after recordation in the Public Records of Osceola County, in the amount of 100% of the total sum of the Agreement, the costs of which are to be paid by Contractor.

DRAFT

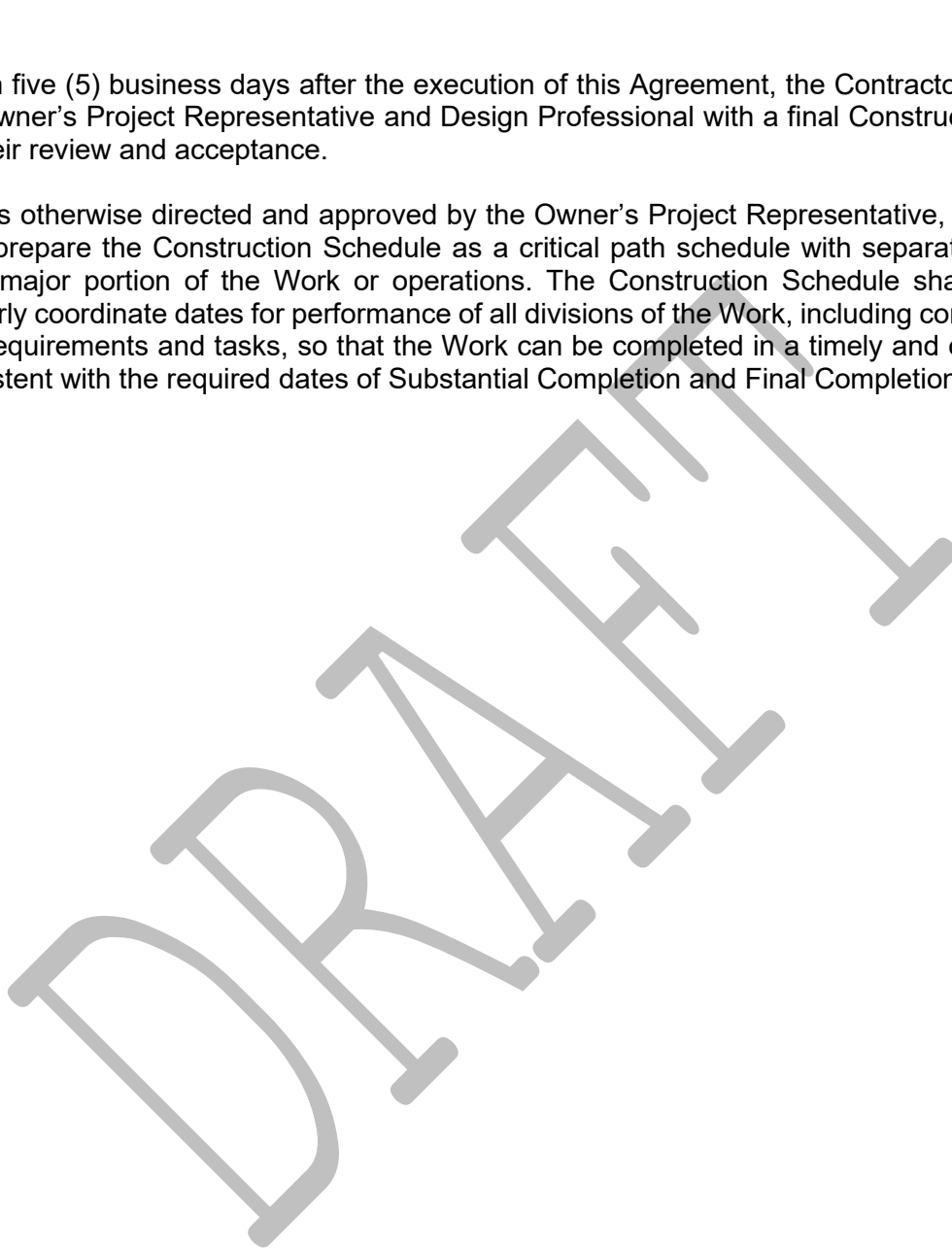
The School District of Osceola County, Florida

EXHIBIT D

Construction Schedule

Within five (5) business days after the execution of this Agreement, the Contractor shall provide the Owner's Project Representative and Design Professional with a final Construction Schedule for their review and acceptance.

Unless otherwise directed and approved by the Owner's Project Representative, the Contractor shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.



The School District of Osceola County, Florida

EXHIBIT E

Schedule of Values

Per Article 11 of this Agreement, prior to the first Application for Payment, the Contractor shall submit to the Design Professional a Schedule of Values for the Work to be performed, in a format and with sufficient supporting data, as may be required by the Design Professional. This Schedule of Values, unless objected to by the Design Professional or otherwise found to be inaccurate, shall be the basis for review of the Contractor's Application for Payment.

DRAFT

**The School District of Osceola County, Florida
EXHIBIT F**

Truth-In-Negotiation Certificate

The Contractor shall execute and furnish to the Owner's Project Representative a "Truth-in-Negotiation Certificate," stating that the wage rates and other factual unit costs supporting compensation are accurate, complete, and current at the time of executing this Agreement and any amendment to this Agreement.

Not Required for this Construction Agreement

DRAFT

The School District of Osceola County, Florida

EXHIBIT F

Truth-In-Negotiation Certificate

The wage rates and other factual unit costs supporting the compensation under the Agreement between the School Board of Osceola County, Florida and _____ (hereinafter referred to as "Company"), are accurate, complete and current as of the time of entering into the Agreement. This Certificate is executed in Compliance with Section 287.055 (5) (a) of the Florida Statutes.

By (print name): _____ Title: _____

Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF _____

Stamp:

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____, by _____, as the Company's representative, states that the Truth-In-Negotiation Certificate is true and correct to the best of his/ her knowledge, information and belief.

Notary Public Signature: _____

_____ Personally known to me

_____ Has produced identification

Type of identification produced: _____

The School District of Osceola County, Florida

EXHIBIT F

Truth-In-Negotiation Certificate

The wage rates and other factual unit costs supporting the compensation under the Agreement between the School Board of Osceola County, Florida and _____ (hereinafter referred to as "Company"), are accurate, complete and current as of the time of entering into the Agreement. This Certificate is executed in Compliance with Section 287.055 (5) (a) of the Florida Statutes.

By (print name): _____ Title: _____

Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF _____

Stamp:

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____, by _____, as the Company's representative, states that the Truth-In-Negotiation Certificate is true and correct to the best of his/ her knowledge, information and belief.

Notary Public Signature: _____

_____ Personally known to me

_____ Has produced identification

Type of identification produced: _____