
_____ **PROJECT**

**CONSTRUCTION MANAGEMENT CONTRACT BETWEEN
THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**

AND

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CONSTRUCTION MANAGEMENT AGREEMENT

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA a body corporate existing under the laws of the State of Florida (“Owner”), hereby contracts with _____ (“Construction Contractor”), a _____, to perform all work (“Work”) in connection with the management and construction of that certain construction of _____ (“Project”), located at _____, said Work being set forth in the plans and specifications being prepared by _____, the Architect and/or Engineer of Record (“Design Professional”) and all other Contract Documents hereafter specified.

Owner and Construction Contractor, for the consideration herein set forth, agree as follows:

Contract Documents

C. The Contract Documents consist of this Agreement, the Exhibits described in Section 8 hereof, and any duly executed and issued addenda, Change Orders, Construction Change Directives, Field Orders and amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of the Project (“Construction Documents”) being prepared by Design Professional, but only after said Construction Documents have been completed by Design Professional and approved in writing by Owner. All of the foregoing Contract Documents are sometimes referred to herein as the “Contract”.

D. Owner shall furnish Construction Contractor with one (1) sealed copy and one (1) reproducible set of the Construction Documents. Any additional copies of Construction Documents, required by Construction Contractor for execution of the Work, shall be made by Construction Contractor from its reproducible set at Construction Contractor’s sole cost and expense. The reproducible set of the Construction Documents shall be returned to Owner upon final acceptance of the Work or termination of the Contract, whichever occurs first. Provided, however, Owner is furnishing Construction Contractor a reproducible set of Construction Documents for Construction Contractor’s convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

Scope of Work

The Work to be provided by Construction Contractor pursuant to this Contract shall be performed essentially in two phases. Those phases being Pre-Construction Phase Services and Construction Phase Services. At the discretion of Owner, those two phases may overlap.

E. **Pre-Construction Phase Services.** Construction Contractor shall review and comment upon the Construction Documents being developed by Design Professional. The scope of that review shall include, but not be limited to, reviewing those various documents for value engineering and constructability. As the Construction Documents are developed by Design Professional through the various design phases set forth in the Design Professional Services Agreement between Design Professional and Owner (“Design Agreement”), Construction Contractor shall provide Owner with detailed construction cost estimates with respect to those documents. Construction Contractor agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate with Design Professional with respect to the design of the Project. Construction Contractor shall provide all other services during the Pre-Construction Phase of the Project as set forth in the Contract Documents.

F. **Construction Phase Services.** After the Construction Documents have been sufficiently completed by Design Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Contractor have agreed in writing upon the guaranteed maximum price to be paid Construction Contractor and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Contractor shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents. Notwithstanding anything herein to the contrary, as and to the extent expressly directed and authorized by Owner in writing, Construction Contractor shall commence to construct those portions of the Work designated by Owner even though the guaranteed maximum price and/or Contract Time for the entire Work has not yet been agreed to by the parties, so long as they have agreed in writing upon the compensation to be paid Construction Contractor and the performance time for such portion of the Work.

Relationship of Parties

A. Construction Contractor accepts the relationship of trust and confidence established by this Agreement. Construction Contractor covenants with Owner to cooperate with Design Professional; to utilize Construction Contractor’s best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Contractor acknowledges that (i) it has represented to Owner that it has specific expertise in the planning, management and construction of school facilities and (ii) that such representation is a material inducement to Owner to enter into this Contract.

G. Wherever the terms of this Contract refer to some action, consent, or approval (excluding approvals of Change Orders, Construction Change Directive or amendments to the Contract) to be provided by Owner or some notice, report or document is to be provided to

Owner, such reference to “Owner” shall mean Owner, Owner’s staff, or Owner’s designee (to the extent such designee has been expressly authorized by Owner in writing), unless otherwise stated herein.

C. Owner may utilize the services of a Program Manager to assist it with the management of the design and construction of the Project. In the event Owner does utilize the services of a Program Manager with respect to this Project, Owner shall notify Construction Contractor in writing of such decision and the Program Manager shall be deemed to be an Owner designee as referenced in Paragraph B above. Further, to the extent Construction Contractor is required to name Owner as an additional insured under any insurance policy to be maintained by Construction Contractor pursuant to the terms of the Contract Documents, Construction Contractor shall cause the Program Manager to also be named as an additional insured party under all such policies. The Program Manager shall be Owner’s representative with respect to the Project, with authority to transmit instructions, receive information, and interpret and define Owner’s policies and decisions with respect to the Work. However, except as may be otherwise expressly authorized in writing by Owner, the Program Manager is not authorized on behalf of Owner to issue any verbal or written orders or instructions to Construction Contractor that would have the affect, or be interpreted to have the affect, of amending or modifying the terms or conditions of the Contract Documents or modifying or amending in any way whatever the: (1) scope or quality of Work to be performed and provided by Construction Contractor as set forth in the Contract Document; (2) the time within which Construction Contractor is obligated to complete the Work; or (3) the amount of compensation Owner is obligated or committed to pay Construction Contractor as set forth in the Contract Documents.

D. Construction Contractor hereby designates _____ as its Project Manager, with full authority to bind and obligate Construction Contractor on all matters arising out of or relating to the Work or the Contract Documents. Construction Contractor agrees that the Project Manger shall devote whatever time is required to satisfactorily manage the Work and further agrees that the Project Manager shall not be removed or replaced by Construction Contractor without Owner’s prior approval, which approval shall not be unreasonably withheld.

Contract Amount

In consideration of the full and faithful performance by Construction Contractor of the covenants in this Contract, Owner agrees to pay, or cause to be paid, to Construction Contractor the following amounts (herein “Contract Amount”), in accordance with the terms of this Contract:

A. **Pre-Construction Phase Services.** For all Pre-Construction Phase Services, including, but not limited to, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases, and preparing cost estimates, Construction Contractor shall receive the fixed amount of \$_____ as the total lump sum compensation for its services. Monthly installment payment of the total lump sum compensation shall be based upon the percent completion of the designated portion of the Pre-Construction Services for each particular

month and Owner's receipt of Construction Contractor's written invoice for such payment, said invoice to be in a form reasonably acceptable to Owner. The final invoice shall not be submitted until either (i) the GMP Amendment is executed for the entire Work, or (ii) the parties fail to reach agreement on the GMP Amendment and Owner elects to terminate this Contract as provided in section 4.B hereafter, whichever occurs first.

B. **Construction Phase.** With respect to the Construction Phase Services to be provided by Construction Contractor hereunder, Owner shall reimburse Construction Contractor for the Cost of the Work (as that term is defined hereafter), and pay Construction Contractor a fixed Construction Management Fee of _____% of the estimated Cost of the Work, as that estimate is established at the time the GMP is initially set by the parties. The Construction Management Fee shall be Construction Contractor's total compensation for all overhead not reimbursable as Cost of the Work under Section 5.A. below, as well as Construction Contractor's total profit for Construction Phase Services. Construction Contractor agrees to provide Owner with a guaranteed maximum price proposal for the total sum of the Construction Management Fee plus the Cost of the Work within 45 days after the Construction Documents in Owner's opinion are sufficiently completed by Design Professional and approved in writing by Owner. The guaranteed maximum price proposal shall be based upon the previous cost estimates provided by Construction Contractor as required hereunder. Further, the proposal shall be broken down into the categories and level of detail required by Owner. Construction Contractor agrees that all of its books, records and files, with respect to its development of the guaranteed maximum price proposal, shall be open to Owner for review and copying. The final guaranteed maximum price shall be mutually agreed upon by Owner and Construction Contractor and shall be set forth in the GMP Amendment ("GMP"). The form for GMP Amendment is attached hereto as Exhibit K. Construction Contractor shall provide a detailed breakdown acceptable to Owner of its guaranteed maximum price proposal, as well as for the GMP. For each line item in the GMP, Construction Contractor shall develop and maintain a written report which identifies and explains all variances and deviations from the bid amount originally submitted for that line item, to the final line item price incorporated into the GMP. Construction Contractor guarantees that in no event shall the Construction Management Fee and the total Cost of the Work exceed the GMP, as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. In the event Construction Contractor and Owner fail to reach an agreement on the GMP, Owner may elect to terminate this Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned through the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Contractor shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed.

Cost of the Work

A. **Costs to be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Contractor in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Contractor has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work shall include only those items set forth below in this subsection A:

1. **Labor Costs.**

- a. Wages of construction workers directly employed by Construction Contractor to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals performing the work.
- b. Wages or salaries of Construction Contractor's supervisory and administrative personnel who are stationed at the Project site with Owner's written agreement.
- c. Wages and salaries of Construction Contractor's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement as in subsection A.1.b above.
- d. The parties hereby establish the fixed markup rate of thirty-five percent (35%) for all labor burden, including all taxes, insurance, contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under subsections A.1.a through A.1.c, above.

2. **Subcontract Costs.** Payments made by Construction Contractor to subcontractors in accordance with the requirements of the applicable written subcontracts.

3. Cost of Materials and Equipment Incorporated into the Completed Construction.

- a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- b. Costs of materials described in subsection A.3.a, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Construction Contractor; amounts realized, if any, from such sales, shall be credited to Owner as a deduction from the Costs of the Work.

4. Costs of other materials and equipment, temporary facilities and related items.

- a. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Contractor at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Contractor.
- b. Rental charges, at standard industry rates for the area, for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Contractor at the Project site, whether rented from Construction Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of all equipment rented, whether from Construction Contractor or others, shall be subject to Owner's prior written approval.
- c. Cost of removal and proper disposal of debris from the Project site.
- d. Costs of telegrams, long distance telephone calls, postage and parcel delivery charges and telephone service at the Project site and reasonable petty cash expenses of the Project site office.

- e. That portion of the reasonable travel and subsistence expenses of Construction Contractor's personnel, assigned to the Project site, incurred while traveling outside of the Orlando/Orange County metropolitan area in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner.

5. **Miscellaneous Costs.**

- a. That portion of any separate premiums for (i) bonds directly attributable to this Contract and (ii) any additional insurance coverages which are purchased by Construction Contractor, with Owner's prior written approval, beyond the level of coverage specified herein.
- b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Contractor is liable.
- c. Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Contractor is required by the Contract Documents to pay.
- d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.
- e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.
- f. Deposits lost for causes other than Construction Contractor's fault or negligence.
- g. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Contractor, reasonably incurred by Construction Contractor in performance of the Work and with Owner's prior written consent, said consent to be given or denied in Owner's sole discretion.
- h. Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Construction

Contractor, or its subcontractors or suppliers, provided that such damage or nonconforming Work was not caused by (i) the negligence or failure to fulfill a specific responsibility of Construction Contractor to Owner set forth in the Contract Documents, or (ii) Construction Contractor's foremen, engineers, superintendents or other supervisory, administrative or managerial personnel, or (iii) the failure of Construction Contractor's personnel to supervise adequately those portions of the Work to be performed by Construction Contractor's subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by Construction Contractor from (i) insurance or bonds, (ii) any of the subcontractors or suppliers, or (iii) some other appropriate source.

6. **Other Costs.** Other costs incurred in performance of the Work if and to the extent approved in advance in writing by Owner.

E. **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the following items:

1. Salaries and other compensation of Construction Contractor's personnel stationed at Construction Contractor's principal office or offices other than the Project site office.
2. Expenses of Construction Contractor's principal office and offices other than the Project site office.
3. Overhead and general expenses, except as may be expressly included in subsection A above.
4. Construction Contractor's capital expenses, including interest on Construction Contractor's capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided in subsection A.4.b above.
6. Except as expressly provided in subsection A.5.h. above, costs due to the fault or negligence of Construction Contractor, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

7. Any costs not specifically and expressly described in subsection A above.
8. Costs which would cause the GMP to be exceeded (as the GMP may be adjusted pursuant to the terms herein for Change Order and Construction Change Directive).

C. **Discounts, Rebates and Refunds.**

1. Cash discounts obtained on payments made by Construction Contractor shall accrue to Owner if (i) before making the payment, Construction Contractor included them in an application for payment and received payment therefor from Owner, or (ii) Owner has deposited funds with Construction Contractor with which to make payments; otherwise, cash discounts shall accrue to Construction Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Construction Contractor shall make provisions so that they can be secured.
2. Amounts which accrued to Owner in accordance with the provisions of subsection C.1. above shall be credited to Owner as a deduction from the Cost of the Work.

Bonds

A. Within ten (10) business days after the GMP is agreed to by Owner and Construction Contractor, Construction Contractor shall provide Owner with Performance and Payment Bonds, in the form prescribed in Exhibits C and D, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Construction Contractor. The Performance and Payment Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

1. The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The surety company shall be in full compliance with the provisions of the Florida Insurance Code.

4. The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
5. The Bonds must be fully performable in Florida, with service and venue in Orange County, Florida.
6. If the GMP exceeds \$500,000.00, the surety company shall also comply with the following provisions:
 - a. The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

| CONTRACT | POLICYHOLDER'S RATING | REQUIRED FINANCIAL RATING |
|--------------------------|--------------------------|---------------------------------|
| \$ 500,000 to 1,000,000 | A | CLASS IV |
| 1,000,000 to 2,500,000 | A | CLASS V |
| 2,500,000 to 5,000,000 | A | CLASS VI |
| 5,000,000 to 10,000,000 | A | CLASS VII |
| 10,000,000 to 25,000,000 | A | CLASS VIII |
| 25,000,000 to 50,000,000 | A | CLASS IX |
| 50,000,000 to 75,000,000 | A | CLASS X |

- b. The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
 - (1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
 - (2) In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

F. If the surety for any bond furnished by Construction Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, Construction Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's approval.

G. In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, Construction Contractor shall record within 5 days in the Public Records of Orange County, Florida, a copy of the Performance and Payment Bonds. Construction Contractor shall deliver within 10 days to Owner evidence, reasonably acceptable to Owner, of the recording of said Bonds. The delivery of such evidence is a condition precedent to Owner's obligation to make any progress payments to Construction Contractor hereunder.

Contract Time and Liquidated Damages

A. Time is of the essence in the performance of the Work under this Contract. The "Pre-Construction Commencement Date" shall be established in a Notice to Proceed to be issued by Owner. Construction Contractor shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after the Pre-Construction Phase Commencement Date. Any Work performed by Construction Contractor prior to the Pre-Construction Phase Commencement Date shall be at the sole risk of Construction Contractor. The "Construction Phase Commencement Date" shall be established in GMP Amendment. Construction Contractor shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the "Contract Time". The Contract Time is set forth with more specificity in Paragraph B below.

B. Because the Work is to be completed in two phases, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project. Accordingly, Construction Contractor agrees to provide the Pre-Construction Phase Services in accordance with the design schedule established pursuant to the terms of the Design Agreement. With respect to the Construction Phase Services, the GMP Amendment shall include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Contractor. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event Construction Contractor and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate this Contract. In the event of any such termination, Construction Contractor shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Contractor shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where Owner can occupy or utilize the Work for its intended purpose. Design Professional shall certify the date Substantial Completion of the Work is

achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by Owner within 30 calendar days after the Substantial Completion date, or within 30 calendar days after the Construction Contractor's receipt of the punch list, whichever date occurs last.

C. Owner and Construction Contractor recognize that, since time is of the essence for this Contract, Owner will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified in the GMP Amendment, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify, because this is a public construction project that will, when completed, benefit the public and enhance the delivery of valuable education to the public, in Orange County, Florida. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from Construction Contractor, if Construction Contractor fails to achieve Substantial Completion of the Work within the required Contract Time. Should Construction Contractor fail to substantially complete the Work within the required time period, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, \$ _____ for each calendar day thereafter until Substantial Completion is achieved. Construction 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 Owner's actual damages at the time of contracting if Construction Contractor fails to substantially complete the Work in a timely manner.

D. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. The term "business day" as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

Exhibits Incorporated

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

| | |
|------------|---|
| Exhibit A: | General Terms and Conditions |
| Exhibit B: | Supplemental Terms and Conditions |
| Exhibit C: | Form of Payment Bond |
| Exhibit D: | Form of Performance Bond |
| Exhibit E: | Insurance Requirements |
| Exhibit F: | Form of Release and Affidavit |
| Exhibit G: | Form of Construction Contractor Application for Payment |
| Exhibit H: | Form of Change Order |

- Exhibit I: Master Project Schedule Milestones
- Exhibit J: Construction Contractor’s Staffing Schedule
- Exhibit K: GMP Amendment to Agreement Between Owner and Construction Contractor
- Exhibit L: Truth-In-Negotiation Certificate
- Exhibit M: Certificate of Insurance Form

Notices

A. All notices required or made pursuant to this Contract by Construction Contractor to Owner shall be in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, (iii) by hand delivery to the appropriate address as herein provided, or (iv) by telecopy with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

Orange County Public Schools
Facility Services, Design & Construction
6501 Magic Way, Building 100 A
Orlando, Florida 32809
 ATTENTION: _____
 Fax No.: _____

H. All notices required or made pursuant to this Contract by Owner to Construction Contractor shall be made in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, (iii) by hand delivery to the appropriate address as herein provided, or (iv) by telecopy with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

 ATTENTION: _____
 Fax No.: _____

I. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Modification

No modification or amendment to the Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Successors and Assigns

Subject to other provisions hereof, the Contract shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Contract.

Governing Law

The Contract shall be interpreted under and its performance governed by the laws of the State of Florida.

No Waiver

The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Entire Agreement

Each of the parties hereto agrees and represents that the Contract comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Contract.

Severability

Should any provision of the Contract be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Construction

Unless the context of this Contract otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Contract refer to this Contract as a whole and not to any particular provision of this Contract, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Contract and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Contract shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

OWNER:

CONSTRUCTION CONTRACTOR:

The School Board of Orange County,
Florida, a Body Corporate

By: _____
Print Name: _____
Its: _____
Date: _____

By: _____
Print Name: _____
Its: _____
Date: _____

Attest:

By: _____

Clerk of the School Board
of Orange County, Florida

EXHIBIT A

GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS.

1.1 It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein. Provided, however, in the event the standard specification, manual, code, law or regulation is changed after the GMP Amendment has been executed by the parties, Construction Contractor shall be entitled to a Change Order equitably adjusting the Contract Amount and/or Contract Time to the extent such change materially impacts the Contract Time and/or Contract Amount.

1.2 If during the performance of the Work Construction Contractor discovers a conflict, error or discrepancy in the Contract Documents, Construction Contractor immediately shall report same to Design Professional in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Design Professional. Prior to commencing each portion of the Work, Construction Contractor shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Contractor shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Contractor, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Construction Contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon Construction Contractor, as determined by Owner. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware,

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accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

2. INVESTIGATION AND UTILITIES.

2.1 Construction Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Construction Contractor to acquaint itself with any applicable conditions shall not relieve Construction Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Construction Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section 2 as the "Utilities". Construction Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.

2.3 If during the performance of the Work, Construction Contractor or any subcontractor, sub-subcontractor, agent, employee or anyone else for whom Construction Contractor is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Construction Contractor shall take all actions necessary and required to immediately restore such Utilities service. If Construction Contractor fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Contractor within five (5) business days of written demand for same from Owner.

3. SCHEDULE.

3.1 The Construction Contractor shall prepare and provide the various schedules set forth in Exhibit B to the Agreement. Said schedules shall include but not be limited to an overall progress schedule for the Project which not only includes the Pre-

Construction Phase and Construction Phase Services to be provided by Construction Contractor hereunder, but also shall include the Design Professional's performance schedules ("Master Project Schedule").

3.2 The Master Project Schedule and all other schedules required hereunder shall be updated by Construction Contractor as often as is specified in Exhibit B to the Agreement. The Master Project Schedule and all updates to it shall be subject to Owner's and Design Professional's review and comment. Construction Contractor's submittal of a satisfactory Master Project Schedule and updates thereto and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Contractor.

4. **PROGRESS PAYMENTS.**

4.1 Construction Contractor's monthly Applications for Payment shall be in such form and contain such detail and backup as Owner reasonably may require. Prior to submitting its first monthly Application for Payment, Construction Contractor shall submit to Owner and Design Professional, for their review and approval, a Schedule of Values based upon the lump sum compensation to be paid Construction Contractor for Pre-Construction Phase Services hereunder. After its approval by Owner, that Schedule of Values shall be used as the basis for Construction Contractor's monthly Applications for Payment with respect to Pre-Construction Phase Services. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Pre-Construction Phase Commencement Date. The approved Schedule of Values shall be updated to reflect current Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit G.

4.2 At the time it submits its GMP proposal to Owner, Construction Contractor also shall submit to Owner and Design Professional, for their review, a revised Schedule of Values based upon the GMP proposal; all in C.S.I. format, listing the major elements of the Work and the dollar value for each element. That revised Schedule of Values, as further revised to reflect the final negotiated GMP amount and as approved by Owner, will be attached to the GMP Amendment and shall be used as the basis for Construction Contractor's monthly Applications for Payment thereafter. This revised Schedule of Values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit G.

4.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all

of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials.

4.4 Construction Contractor shall submit four (4) notarized original copies of its monthly Application for Payment to Design Professional on or before the 25th day of each month for Work performed during the previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within seven (7) calendar days after receipt of each Application for Payment, Design Professional shall submit to Owner a Certificate for Payment in the amount recommended by Design Professional as being due and owing Construction Contractor. Owner shall pay Construction Contractor that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Contractor within thirty (30) calendar days of Owner's approval of same.

4.5 Owner shall retain ten percent (10%) of that portion of the gross amount of each monthly payment request certified by Design Professional and approved by Owner for payment, until fifty percent completion of the Work. Upon fifty percent completion of the Work, the amount of retainage thereafter withheld by Owner from subsequent payments shall be reduced to 5% of that portion of the gross amount of each monthly payment request certified by Design Professional and approved by Owner for payment. Also, after fifty percent (50%) completion of the Work has been achieved, and to the extent required by Section 218.735(8)(d), Fla. Stat., Construction Contractor may request in its next monthly Application for Payment release of up to one-half of the retainage theretofore withheld by Owner prior to said fifty percent (50%) of the Work being completed. Owner reserves the right, at its sole discretion, to further reduce or release any portion of such retainage prior to final payment. Provided, however, nothing in this Section 4.5 shall preclude or limit the Owner's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law.

4.6 Monthly payments to Construction Contractor shall in no way imply approval or acceptance of Construction Contractor's work.

4.7 Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached to the Agreement as Exhibit F, showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full through the previous month's Application for Payment. Further, Construction Contractor shall attach to each Application for Payment the monthly written MWBE status report referenced in Paragraph 41.1 hereafter and the monthly written Apprenticeship Participation Verification report referenced in Paragraph 41.2 hereafter. Owner shall not be required to make payment until and unless these affidavits are furnished by Construction Contractor. Further, if Construction Contractor is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which Owner has paid Construction Contractor, Construction Contractor agrees to refund such money to Owner.

5. PAYMENTS WITHHELD.

5.1 Design Professional shall review each Application for Payment submitted by Construction Contractor and shall make recommendations to Owner as to the proper amounts, if any, which may be owed Construction Contractor under the Application for Payment. Design Professional's payment recommendation shall be evidenced by a Certificate for Payment issued by Design Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Design Professional and Owner shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Construction Contractor in an Application for Payment, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Construction Contractor under this Contract or any other agreement between Owner and Construction Contractor, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the fault or neglect of Construction Contractor; (c) Construction Contractor's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Construction Contractor's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Construction Contractor. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Contractor's expense, if such items are not cured by Construction Contractor to Owner's reasonable satisfaction within three (3) days after Construction Contractor's receipt of written notice from Owner.

6. FINAL PAYMENT.

6.1 Owner shall make final payment to Construction Contractor within sixty (60) calendar days after the Work is finally accepted by Owner in accordance with Paragraph 23.2 herein, provided that Construction Contractor first, and as an explicit condition precedent to the accrual of Construction Contractor's right to final payment, shall have furnished Owner with a properly executed and notarized final release (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached to the Agreement as Exhibit F, as well as, a duly executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or Owner.

6.2 Construction Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Contractor against Owner arising out of this Contract or otherwise relating to the Project, except those identified in writing by Construction Contractor as unsettled in the final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any

obligations of Construction Contractor hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection.

7. SUBMITTALS AND SUBSTITUTIONS.

7.1 Construction Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Contractor shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. The Construction Contractor shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to the Design Professional for review and action. The Design Professional will transmit them back to the Construction Contractor who will then issue the submittals to the affected subcontractor for fabrication or revision. The Construction Contractor shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. The Construction Contractor shall request the Design Professional to make interpretations of the drawings or specifications requested of it by the subcontractors. The Construction Contractor shall advise the Design Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable the Design Professional to prioritize requests coming from the Construction Contractor. The Construction Contractor shall advise the Owner and Design Professional in writing when timely response is not occurring on any of the above.

7.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner and Design Professional if sufficient information is submitted by Construction Contractor to allow Owner and Design Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Construction Contractor. All such requests, to the extent possible, should be submitted by Construction Contractor to Design Professional prior to the setting of the GMP.

7.3 If Construction Contractor wishes to furnish or use a substitute item of material or equipment, Construction Contractor shall make application to Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with

the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Design Professional in evaluating the proposed substitute. Design Professional may require Construction Contractor to furnish at Construction Contractor's expense additional data about the proposed substitute.

7.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Construction Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Design Professional, if Construction Contractor submits sufficient information to allow Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Design Professional shall be the same as those provided herein for substitute materials and equipment.

7.5 Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional and Owner shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without Owner's and Design Professional's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Contractor to furnish at Construction Contractor's expense a special performance guarantee or other surety with respect to any substitute. If Owner rejects the proposed substitute, at Owner's discretion, Owner may require Construction Contractor to reimburse Owner for the charges of Design Professional and Design Professional's consultants for evaluating the proposed substitute.

8. **PRE-CONSTRUCTION PHASE SERVICES.**

Construction Contractor shall provide the following review and commentary services, in addition to any other Pre-Construction Phase Services required by the terms of this Contract:

8.1 **Review, Recommendations and Warranty:** The Construction Contractor shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from Schematic Pre-Construction Phase through Construction Documents Phase (as those phases are defined in the Design Agreement). The Construction Contractor shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to the Design Professional and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall address the benefits of the speed of erection and early completion of the Work. The Construction Contractor shall furnish pertinent information as to the availability of materials and labor that will be required. The

Construction Contractor shall submit to the Owner and Design Professional such comments as may be appropriate concerning construction feasibility and practicality. The Construction Contractor shall call to the Owner's and the Design Professional's attention any defects in the design, drawings and specifications or other documents of which it is aware. The Construction Contractor shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format. These estimates shall be performed at the completion of the Program Verification Phase and shall be called the Program Estimate, followed by a Schematic Design Estimate, which shall be followed by the Design Development Estimate, which shall be followed by a 50% Construction Document Estimate, which shall be followed by the setting of the GMP.

8.2 **Review Reports:** Within ten (10) days after receiving the documents produced by the Design Professional, the Construction Contractor shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 8.1 above and on factors set out in Paragraphs 8.3 and 8.4 below. Within the same ten (10) day period, the Construction Contractor shall submit to the Owner, with copies to the Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Construction Contractor may deem appropriate, and all actions taken by the Design Professional with respect to same, any comments the Construction Contractor may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments.

AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN AMENDMENT NO. 1, THE CONSTRUCTION CONTRACTOR SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE. FURTHER, THE CONSTRUCTION CONTRACTOR SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTABLE WITHIN THE CONTRACT TIME.

8.3 **Long Lead Procurement:** The Construction Contractor shall review the Project design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) and consult with Design Professional concerning same. When each item is identified, the Construction Contractor shall notify the subcontractors, Owner and the Design Professional of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. The Construction Contractor shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and advise Owner and Design Professional of any problems or possible delays in delivery.

8.4 **Interfacing**

8.4.1 The Construction Contractor shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items without duplication or overlap, and sequenced to maintain completion of all Work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to the other separate subcontractors.

8.4.2 Without assuming any design responsibilities of the Design Professional, the Construction Contractor shall include in the reports required under Paragraph 8.2 above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Design Professional may arrange for necessary corrections.

9. **CONSTRUCTION PHASE SERVICES.**

Construction Contractor shall provide the following services in addition to any other Construction Phase Services required by the terms of this Contract:

9.1 The Construction Contractor shall arrange for all job-site facilities as required by the Owner and necessary to enable the Construction Contractor and Design Professional to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of such facilities to be finalized prior to the establishment of the GMP.

9.1.1 Tangible personal property, otherwise referred to as job-site facilities, include, but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the Work. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the Work, shall be evaluated based on their cost over the life of the Project. Owning versus leasing shall be considered by the Construction Contractor, obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usable life of the item. The Construction Contractor shall present its evaluation with recommendation to the Owner for approval.

9.1.2 When the Construction Contractor wishes to supply job-site facilities from its own equipment pool, it shall first evaluate buy versus lease as discussed in subparagraph 9.1.1 above. If leasing is found to be the least expensive approach, then it may lease such job-site facilities from its own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

9.1.3 For all such job-site facilities purchased, which may become the property of the Owner at the conclusion of the Work, the Construction Contractor shall maintain

ownership responsibilities of such facilities until final acceptance of the Work. Reimbursement for cost of such equipment will be made at the conclusion of the Work at the documented purchase price. At that time, the Construction Contractor shall provide the Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to its designee.

9.1.4 The Construction Contractor is responsible for proper care and maintenance of all equipment while in its control. At the time of transfer to the Owner, the Owner may refuse acceptance of the equipment if the Owner determines, in its sole discretion, that the equipment has not been properly cared for by the Construction Contractor or that such acquisition would not otherwise be in the best interest of the Owner. In such event, the Construction Contractor will be reimbursed for such item in accordance with Section 5 of the Agreement.

9.2 The Construction Contractor's administration of the Work shall include the following:

9.2.1 Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

9.2.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel.

9.2.3 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.

9.2.4 Provide labor relations management for a harmonious, productive Project.

9.3 The Construction Contractor also shall provide job site administration functions during construction to assure proper documentation, including but not limited to the following:

9.3.1 Job Meetings: Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. In addition, Construction Contractor shall arrange and conduct regular monthly Project status meetings with the Design Professional and Owner.

Construction Contractor shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings,

Construction Contractor shall identify the party or parties responsible for following up on any problems, delay items or questions, and Construction Contractor shall note the action to be taken by such party or parties. Construction Contractor shall revisit each pending item at each subsequent meeting until resolution is achieved. Construction Contractor shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.

9.3.2 Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to the Design Professional of such submittals for action, and closely monitor their review process.

9.3.3 Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier commitments for all subcontractors and maintain a material and equipment expediting log.

9.3.4 Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.

9.3.5 Document Interpretation: Refer all questions for interpretation of the Contract Documents to the Design Professional in writing.

9.3.6 Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to the Owner and the Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to the Owner, the Design Professional, and any permitting authority inspectors.

9.3.7 Subcontractors Progress: Prepare periodic punch lists for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion.

9.3.8 Substantial Completion: Pursuant to the provisions of Paragraph 23.1 of these General Terms and Conditions, ascertain when the Work or designated portions thereof are ready for the Design Professional's Substantial Completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Contractor and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for the Owner's review.

9.3.9 Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to the Owner and Design Professional when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to the Owner, through the Design Professional, all required guarantees, warranties, affidavits, releases, bonds, waivers, manuals, record drawings, and maintenance books.

9.3.10 Start-Up: With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

9.3.11 Record Drawings: Pursuant to the terms of Paragraph 10.2 hereafter, the Construction Contractor shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Construction Contractor into the final record drawings.

9.4 The Construction Contractor shall maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:

- 9.4.1 Subcontracts and Purchase Orders
- 9.4.2 Subcontractor Licenses
- 9.4.3 Shop Drawing Submittal/Approval Logs
- 9.4.4 Equipment Purchase/Delivery Logs
- 9.4.5 Contract Drawings and Specifications with Addenda
- 9.4.6 Warranties and Guarantees
- 9.4.7 Cost Accounting Records
- 9.4.8 Labor Costs
- 9.4.9 Material Costs
- 9.4.10 Equipment Costs
- 9.4.11 Cost Proposal Request
- 9.4.12 Payment Request Records
- 9.4.13 Meeting Minutes
- 9.4.14 Cost-Estimates
- 9.4.15 Bulletin Quotations
- 9.4.16 Lab Test Reports
- 9.4.17 Insurance Certificates and Bonds
- 9.4.18 Contract Changes
- 9.4.19 Permits
- 9.4.20 Material Purchase Delivery Logs
- 9.4.21 Technical Standards
- 9.4.22 Design Handbooks
- 9.4.23 "As-Built" Marked Prints
- 9.4.24 Operating & Maintenance Instruction
- 9.4.25 Daily Progress Reports
- 9.4.26 Monthly Progress Reports
- 9.4.27 Correspondence Files
- 9.4.28 Transmittal Records
- 9.4.29 Inspection Reports
- 9.4.30 Bid/Award Information
- 9.4.31 Bid Analysis and Negotiations

- 9.4.32 Punch Lists
- 9.4.33 PMIS Schedule and Updates
- 9.4.34 Suspense (Tickler) Files of Outstanding Requirements
- 9.4.35 Policy and Procedure Manual

The Project files and records shall be available at all times to the Owner and Design Professional or their designees for reference, review or copying.

9.5 The Construction Contractor shall provide the following services with respect to the Work, to facilitate the smooth, successful and timely occupancy of the Project by Owner:

9.5.1 The Construction Contractor shall provide consultation and Project management to facilitate Owner's occupancy of the Project and provide transitional services to place the Work "on line" in such conditions as will satisfy Owner's operations requirements. The services include the Construction Contractor's coordination of the delivery of Owner supplied furniture, fixtures and equipment for the Project.

9.5.2 The Construction Contractor shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Contractor shall provide Owner's operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training may be video taped by Owner for subsequent presentation to Owner's operations and maintenance personnel.

9.5.3 The Construction Contractor shall secure required guarantees and warranties, and shall assemble and deliver same to the Owner in the manner required by Owner.

10. **DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS.**

10.1 Construction Contractor shall prepare, maintain and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in Exhibit B to the Agreement. The Construction Contractor's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Contractor. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Contractor to Owner or Design Professional pursuant to the Contract Documents.

10.2 Construction Contractor shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and clarifications issued by Design

Professional, in good order and annotated to show all changes made during construction. The record Contract Documents shall be continuously updated by Construction Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directive and Field Orders, and all concealed and buried installations of piping, conduit and utility services. Construction Contractor shall certify the accuracy of the updated record Contract Documents. As a condition precedent to Owner's obligation to pay Construction Contractor, Construction Contractor shall provide evidence, satisfactory to Owner and Design Professional, that Construction Contractor is fulfilling its obligation to continuously update the record Contract Documents. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Contractor's entitlement to final payment, the record Contract Documents, samples and shop drawings shall be delivered to Design Professional by Construction Contractor for Owner.

10.3 Construction Contractor shall advise Owner, its representatives and Design Professional of their requested or required participation in any meeting or inspection giving each at least one week written notice unless such notice is made impossible by conditions beyond Construction Contractor's fault and control, in which case at least 48 hours prior written notice must be given.

11. CONTRACT TIME AND TIME EXTENSIONS.

11.1 Construction Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Contractor or anyone for whom Construction Contractor is liable. Unless expressly noted otherwise in the Contract Documents, Construction Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Section 14 herein.

11.2 Should Construction Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Contractor, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, unusually severe weather conditions by comparison with the ten-year Orange County, Florida, average not reasonably anticipatable, Construction Contractor shall

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notify Owner and Design Professional in writing within seven (7) calendar days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Contractor may have had to request a time extension.

11.2.1 Owner shall have the right, at any time, whether or not Construction Contractor is behind schedule, to order Construction Contractor to accelerate its Work. In the event that Owner orders Construction Contractor to accelerate its Work and Construction Contractor (i) is not behind schedule and (ii) believes that acceleration will increase the cost of performance, Construction Contractor, shall be required to submit a Claim for increase pursuant to Section 13 of this Agreement. Any such claim shall be based exclusively and solely on actual and direct increased field costs associated with the acceleration.

11.3 If Construction Contractor encounters on the Project site any materials reasonably believed by Construction Contractor to be petroleum or petroleum related products or other hazardous or toxic substances which have not been rendered harmless, Construction Contractor immediately shall (i) stop Work in the area affected and (ii) report the condition to Owner in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by the Construction Contractor or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an adjustment in the Contract Time and Construction Contractor shall indemnify the Owner and hold Owner harmless for any costs incurred by the Owner with respect to such hazardous material.

11.4 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Design Professional may be responsible, in whole or in part, shall relieve Construction Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Construction Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of Owner or anyone for whom the Owner is liable, and such delays have a cumulative total of more than twenty-one (21) calendar days, Construction Contractor may make a claim for its actual and direct delay damages accruing after said twenty-one (21) calendar days. Provided, however, Construction Contractor expressly acknowledges and agrees that its actual and direct delay damages shall not exceed \$1000.00 per calendar day. In no event shall Owner be liable to Construction Contractor whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

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12. CHANGES IN THE WORK.

12.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Construction Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by the Design Professional, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Contractor for any increased compensation or adjustment to the Contract Time without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally.

12.2 A Change Order, in the form attached as Exhibit H to the Agreement, shall be prepared by the Construction Contractor, reviewed by Design Professional and Owner, and executed promptly by the parties after an agreement is reached between Construction Contractor and Owner concerning the requested changes. Construction Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Contractor shall mutually agree.

12.3 If Owner and Construction Contractor are unable to agree on a Change Order for the requested change, Construction Contractor shall, nevertheless, promptly perform the change as directed by Owner in a written Construction Change Directive. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Contractor disagrees with Owner's adjustment determination, Construction Contractor must make a claim pursuant to Section 13 of these General Conditions or else be deemed to have waived any claim it might otherwise have had on that matter.

12.4 In the event a requested change is approved by Owner which results in either an increase or decrease to the Contract Amount, a Change Order shall be issued which increases or decreases the GMP by the amount of Construction Contractor's actual and reasonable direct Cost of the Work (including bond premiums). In the event such change Work is performed by subcontractors or sub-subcontractors, a maximum ten percent (10%) markup for each of those subcontractors and sub-subcontractors for all overhead and profit on their direct labor and material costs and actual equipment costs shall be permitted. Construction Contractor shall not be entitled to any mark-up for Change Order work, nor shall the Construction Management Fee be increased as a result of any Change Order work. Provided, however, if at the time final payment is made to Construction Contractor the total Cost of the Work has been increased by approved Change Orders in an amount causing the original GMP as set forth in the GMP Amendment to be exceeded by \$ _____, Construction Contractor shall be entitled to an increase to the Construction Management Fee in the amount of _____ percent (___%) of the amount that exceeds the sum of the original GMP plus \$ _____. If at the time final payment is made to Construction Contractor the total

Cost of the Work has been decreased by approved Change Orders in an amount causing the original GMP as set forth in the GMP Amendment to be reduced by more than \$ _____, not taking into consideration for the purpose of this calculation any Deductive Change Orders associated with Owner's direct purchase program or buy out savings (said reduction amount being referred to herein as the "Reduction"), then Construction Contractor's Fee shall be reduced in the amount of _____% of the Reduction amount.

12.5 Owner shall have the right to conduct an audit of Construction Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Contractor's claim with respect to Construction Contractor's costs associated with any Change Order or Construction Change Directive.

12.6 Design Professional may direct Construction Contractor to make nonmaterial changes to the Work, so long as such changes do not require or result in any adjustment to the Contract Amount, Contract Time or Project quality, and are generally within the scope of the Work. All such changes must be evidenced by a written order from Design Professional to Construction Contractor, with a copy to Owner. Construction Contractor shall comply with all such orders.

13. CLAIMS AND DISPUTES.

13.1 The term "Claim" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

13.2 Initial notice of Claims by Construction Contractor shall be made in writing to Owner and Design Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Construction Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner and Design Professional within thirty (30) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Paragraph 12.4 hereof.

13.3 Construction Contractor shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

13.4 Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Project, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The

parties hereby agree that the agreed upon mediator shall be Lawrence M. Watson, Jr., Esquire, of Upchurch, Watson, White and Max, 900 Winderley Place, Suite 122, Maitland, FL 32751. Should Mr. Watson be unable to act as mediator, the parties shall agree on a substitute mediator. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.

13.5 Any litigation between the Owner and Construction Contractor (which term for the purposes of this subparagraph shall include the Construction Contractor's surety), whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of Florida; and the Owner and the Construction Contractor each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between the Owner and Construction Contractor shall lie and be only in the appropriate State courts of the State of Florida's Ninth Judicial Circuit in and for Orange County, Florida. Construction Contractor consents and submits to the jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court. Owner and Construction Contractor EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY REGARDING ANY SUCH MATTER.

14. **OTHER WORK.**

14.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Contractor prior to starting any such other work. If Construction Contractor believes that such performance will involve additional expense to Construction Contractor or require additional time, Construction Contractor shall send written notice of that fact to Owner and Design Professional within seven (7) calendar days of being notified of the other work. If Construction Contractor fails to send the above required seven (7) calendar days' notice, Construction Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

14.2 Construction Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Contractor shall be responsible for all damage to the work of others caused by the performance

of its Work. Further, Construction Contractor shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Design Professional.

14.3 If any part of Construction Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Contractor shall inspect and promptly report to Design Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) calendar days of the time Construction Contractor first became aware of the delay, defect or deficiency or by the scheduled commencement of Construction Contractor's dependent Work, whichever occurs first. Construction Contractor's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Contractor's Work.

15. INSURANCE.

15.1 During the term of this Agreement Construction Contractor shall provide, pay for, and maintain, with companies satisfactory to Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. Simultaneously with the execution and delivery of this Agreement by Construction Contractor, Construction Contractor has delivered to Owner properly executed Certificates of Insurance (on the modified ACCORD form attached as Exhibit M to the Agreement) evidencing the fact that Construction Contractor has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to Owner, on a timely basis, if requested by Owner. These Certificates and policies shall contain provisions that thirty (30) calendar days written notice by registered or certified mail shall be given Owner of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. Construction Contractor shall also notify Owner, in a like manner, within two (2) calendar days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Contractor from its insurer, and nothing contained herein shall relieve Construction Contractor of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Construction Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. All insurance coverages of Construction Contractor shall be primary to any insurance or self-insurance program carried by Owner applicable to this Agreement.

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

15.2.1 The term "The School Board of Orange County, Florida" shall include the Orange County School Board, a body corporate, the Orange County Public School System and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices

thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of the Orange County School Board.

15.2.2 All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Construction Contractor to meet the requirements of this Agreement shall name The School Board of Orange County, Florida, as that name is defined in subparagraph 15.2.1, above, as an additional insured as to the operations of Construction Contractor under the Contract Documents and shall contain a severability of interests provisions.

15.2.3 Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Contractor.

15.2.4 All insurance coverages of Construction Contractor shall be primary to any insurance or self-insurance program carried by Owner applicable to this Agreement, and the "Other Insurance" provisions of any policies obtained by Construction Contractor shall not apply to any insurance or self-insurance program carried by Owner applicable to this Agreement.

15.2.5 The Certificates of Insurance, which are to be provided pursuant to paragraph 15.1 above, must identify this Contract and be on the form attached as Exhibit M.

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

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

15.3 The acceptance by Owner of any Certificate of Insurance pursuant to the terms of this Agreement evidencing the insurance coverages and limits required hereunder does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.

15.4 Before starting and until completion of all Services required hereunder, Construction Contractor shall procure and maintain insurance of the types and to the limits specified in Exhibit E, "Insurance Coverage," which is attached hereto and made a part hereof Construction Contractor shall require each of its subconsultants and subcontractors to procure and maintain, until the completion of that subconsultant's or subcontractor's work or services,

insurance of the types and to the limits specified in Exhibit E, unless such insurance requirement for the subconsultant or subcontractor is expressly waived in writing by Owner.

15.5 If any insurance provided pursuant to this Agreement expires prior to the completion of the Services required hereunder, renewal Certificates of Insurance and, if requested by Owner, certified, true copies of the renewal policies, shall be furnished to Owner thirty (30) calendar days prior to the date of expiration.

15.6 Should at any time Construction Contractor not maintain the insurance coverages required in this Agreement, Owner may cancel the Agreement and any Work Authorizations issued pursuant to the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge Construction Contractor for such coverages purchased. If Construction Contractor fails to reimburse Owner for such costs within thirty (30) calendar days after demand, Owner has the right to offset these costs from any amount due Construction Contractor under this Agreement. Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

15.7 All insurance companies from whom Construction Contractor obtains the insurance policies required hereunder must meet the following minimum requirements:

15.7.1 The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida.

15.7.2 The insurance company must have been in such insurance business continuously for not less than five (5) years immediately prior to the date of execution of this Agreement.

15.7.3 The insurance company must have an A. M. Best policyholder rating of either "A+", "A", or "A-".

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

15.8 Construction Contractor is aware of the Owner Controlled Insurance Program and shall incorporate the most current OCIP manuals, if appropriate, into the documents to be prepared by Construction Contractor per this Agreement.

15.9 Owner shall maintain property insurance with respect to the Project. The property insurance shall include the interests of Construction Contractor and its subcontractors and suppliers in the Project. The property insurance shall be an "All Risk" type of policy, with coverage amounts, deductibles and sublimits established by Owner. Any losses under the

property insurance shall be adjusted by Owner, with the cooperation of Construction Contractor, with any claim check being made payable to Owner. Construction Contractor shall be liable and responsible for all property insurance deductibles up to the amount of Five Thousand Dollars (\$5,000.00) on each loss occurrence.

16. WAIVER OF SUBROGATION.

16.1 Owner and Construction Contractor waive all rights of subrogation against each other, Design Professional, the Program Manager (if any), and the board members, directors, officers, agents, employees, subconsultants and subcontractors of any of them, for damages or injuries caused by perils covered by any insurance maintained by a party hereunder, to the extent such damages or injuries are covered by such insurance, except no party hereto waives any rights they may have to the proceeds of such insurance held by another party. Construction Contractor shall require similar waivers from all its subcontractors.

16.2 If any policies of insurance referred to in this Section require an endorsement to provide any waiver of subrogation referenced above, the owners of such policies will cause them to be so endorsed.

17. INDEMNIFICATION.

17.1 To the maximum extent permitted by Florida law, Construction Contractor shall defend, indemnify and hold harmless Owner and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by Construction Contractor or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Contractor or anyone employed or utilized by the Construction Contractor in the performance of this Agreement.

17.2 The duty to defend under this Article 17 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Construction Contractor, Owner and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Construction Contractor. Construction Contractor's obligation to indemnify and defend under this Article 17 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

18. CLEANUP AND PROTECTIONS.

18.1 Construction Contractor agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. If Construction Contractor fails to keep the Project site clean, Owner has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to backcharge the Construction Contractor for the costs of such clean up. At the completion of the Work, Construction Contractor shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by Owner.

18.2 Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Contractor from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Contractor to condition at least equal to that existing at the time of Construction Contractor's commencement of the Work.

19. ASSIGNMENT.

19.1 Construction Contractor shall not assign this Contract or any part thereof, without the prior consent in writing of Owner. If Construction Contractor does, with approval, assign this Contract or any part thereof, it shall require that its assignee be bound to it and to assume toward Construction Contractor all of the obligations and responsibilities that Construction Contractor has assumed toward Owner.

20. PERMITS, LICENSES AND TAXES.

20.1 All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Contractor. Permits and licenses to be acquired by Construction Contractor with the assistance of Design Professional include, but are not limited to, building, site, Department of Education, and utility permits, as well as all Health Department (DER) permits required for the construction or relocation of Orange County water and/or sanitary sewer lines and facilities, to the extent such water and/or sewer work is included in this Contract. If Construction Contractor performs any Work without obtaining, or contrary to, such permits or licenses, Construction Contractor shall bear all costs arising therefrom. All costs incurred by Construction Contractor with respect to performing its obligations under this Paragraph 20.1 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Agreement. The Owner shall fully cooperate with the Construction Contractor where necessary. Construction Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

20.2 Construction Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the

performance of the Work. Additionally, Construction Contractor shall comply with and fully implement the sales tax savings program with respect to the Work, as set forth below in Paragraph 20.3.

20.3 Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and wishes to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work. Construction Contractor shall prepare purchase orders to vendors selected by Construction Contractor, for execution by Owner, on forms provided by Owner. Construction Contractor shall allow two weeks for execution of all such purchase orders by Owner. Construction Contractor represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order to maximize cost savings for the Project. Within thirty (30) days after the GMP is established, Construction Contractor will process one (1) deductive Change Order under the Agreement for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to the final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner's review and approval. With respect to all direct purchases by Owner, Construction Contractor shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all direct purchases. Notwithstanding anything herein to the contrary, Construction Contractor expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant this Paragraph 20.3 shall be included within and covered to the same extent as all other warranties provided by Construction Contractor pursuant to the terms of the Contract Documents. Owner shall assign to Construction Contractor any and all warranties and rights Owner may have from any manufacturer or supplier of any such direct purchases by Owner.

21. TERMINATION FOR DEFAULT.

21.1 Construction Contractor shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Article, if Construction Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by Owner or Design Professional or as provided for in the approved Master Project Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) fails to promptly pay its subcontractors and suppliers; or (11) materially breaches any other provision of the Contract Documents.

21.2 If Owner determines that Construction Contractor is in default under this Contract, Owner shall notify Construction Contractor in writing of Construction Contractor's default(s). If Owner determines that Construction Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Construction Contractor of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Contractor's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Construction Contractor, take assignments of any of Construction Contractor's subcontracts and purchase orders that Owner may designate, and complete all or any portion of Construction Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose. In making either the initial determination that Construction Contractor is in default under this Contract or the subsequent determination that Construction Contractor has failed to satisfactorily cure its default, Owner may rely solely upon the Design Professional's certification to Owner that in the Design Professional's opinion the Construction Contractor is in default or has failed to satisfactorily cure its default.

21.3 If Owner deems any of the foregoing remedies necessary, Construction Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Construction Contractor agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Contractor shall not be entitled to any portion of such excess, except for the unpaid portion of the Construction Management Fee earned and the Cost of Work incurred prior to Construction Contractor's right to continue performance under this Contract being terminated. Any amounts to be paid to Owner by Construction Contractor pursuant to this Paragraph 21.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

21.4 The liability of Construction Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event Owner has exercised its right to terminate due

to Construction Contractor's default, Construction Contractor shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy.

21.5 If, after notice of termination of Construction Contractor's right to proceed pursuant to this Article, it is determined for any reason that Construction Contractor was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Construction Contractor provided herein, then such termination shall be deemed a termination for Owner's convenience and Construction Contractor's remedies against Owner shall be the same as and limited to those afforded Construction Contractor under Paragraph 22.1 below.

22. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.

22.1 Owner shall have the right to terminate this Contract without cause upon seven (7) calendar days written notice to Construction Contractor. In the event of such termination for convenience, Construction Contractor's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Construction Contractor shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

22.2 Owner shall have the right to suspend all or any portions of the Work upon giving Construction Contractor two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Construction Contractor's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Contractor be entitled to any additional compensation or damages except as otherwise expressly provided for in the Contract Documents. Provided, however, if the ordered suspension exceeds ninety (90) calendar days, Construction Contractor shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension.

23. COMPLETION.

23.1 When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Construction Contractor shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Said written notice from Construction Contractor shall include a proposed punch list of all items of Work to be completed or corrected by Construction Contractor. Within a reasonable time thereafter, Owner, Construction Contractor and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Contractor in writing giving the reasons therefor. In such case, Construction Contractor shall

pay the costs of all additional Substantial Completion inspections. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Contractor a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Contractor and include a final punch list of items to be completed or corrected by Construction Contractor before final payment. Such final punch list shall be in compliance with the Contract Documents and all applicable laws. Accordingly, Design Professional shall provide the final punch list to Construction Contractor within seven calendar days after Construction Contractor has achieved Substantial Completion. Construction Contractor acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Construction Contractor to complete all the Work required under this Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if this Agreement involves Work on more than one building or structure, or involves a multi-phased Project, a punch list shall be developed in accordance with the timelines set forth in this paragraph for each building, structure, or phase of the Project. Owner shall have the right to exclude Construction Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or Partial Substantial Completion), but Owner shall allow Construction Contractor reasonable access to complete or correct items on the final punch list.

23.2 When Construction Contractor believes it has fully performed all of the Work, including all punch list items, Construction Contractor shall deliver to Owner a written affidavit from Construction Contractor certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be delivered to Owner by Construction Contractor at the same time it submits its final Application for Payment. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Design Professional and Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner and Design Professional determine Construction Contractor has completed the entire Work, Design Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (i) all of the Work has been completed in accordance with the requirements of the Contract Documents; (ii) the final balance due Construction Contractor, as noted in the final Certificate for Payment, is due and payable; and (iii) all conditions precedent to Construction Contractor's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Contractor submits: (1) the final Release and Affidavit in the form attached to the Agreement as Exhibit F, (2) consent of surety to final payment, and (3) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability,

even though Design Professional may have issued its recommendations. Unless and until Owner is completely satisfied, neither the final payment nor the retainage shall become due and payable.

24. WARRANTY.

24.1 Construction Contractor shall obtain and assign to Owner all express warranties given to Construction Contractor by any subcontractors or by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Contractor expressly warrants to Owner that all materials and equipment to be incorporated into the Work shall be new unless otherwise specified. Further, Construction Contractor expressly warrants to Owner that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Contractor further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Further, any special warranty to be provided will be in such form as is acceptable to Owner and shall not include any exclusions, exceptions or modifications except to the extent approved by Owner in its sole discretion. In addition to all other rights and remedies available to Owner at law or in equity, including any implied warranties Owner may be entitled to as a matter of law, Construction Contractor expressly warrants to Owner that it shall promptly correct, upon receipt of written notice from Owner, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. In the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to correct and fix such defective or non-conforming portions of the Work, and Construction Contractor shall reimburse Owner for all costs and expenses incurred by Owner in performing such Work. This obligation to correct defective or nonconforming Work shall run for a period of one year (or such longer period of time as may otherwise be specified in the Contract Documents) commencing from the date **Substantial Completion** is achieved. With respect to the correction of any defective or nonconforming Work, Construction Contractor shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work. Construction Contractor shall conduct, jointly with Owner and Design Professional, a warranty inspection at six (6) months and eleven (11) months after the date **Substantial Completion** is achieved. Construction Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Construction Contractor, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Construction Contractor), improper operation by Owner (unless such operations were performed in accordance with the directions from Construction Contractor), or normal wear and tear under normal usage.

25. TESTS AND INSPECTIONS.

25.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all

times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Construction Contractor shall provide proper, safe conditions for such access. Construction Contractor shall provide Design Professional and Owner's Uniform Building Construction Inspector with timely prior written notice (at least 48 hours) of the readiness of the Work for all required inspections, tests or approvals.

25.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Construction Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Design Professional.

25.3 If any Work that is to be inspected, tested or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Contractor and without obtaining the written concurrence from Design Professional, such Work must, if requested by Design Professional, be uncovered for observation. Such uncovering shall be at Construction Contractor's expense unless Construction Contractor has given Design Professional 48 hours written notice of Construction Contractor's intention to cover the same and has requested written concurrence by Design Professional and Design Professional has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Design Professional, such Work must, if requested by Design Professional, be uncovered for Design Professional's observation and be replaced at Construction Contractor's sole expense.

25.4 Owner shall charge to Construction Contractor and may deduct from any payments due Construction Contractor all engineering and inspection expenses incurred by Owner in connection with any overtime work unless such overtime work was expressly requested by the Owner and the Construction Contractor was on schedule. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

25.5 Neither observations by Design Professional or Owner, nor inspections, tests or approvals by others shall relieve Construction Contractor from Construction Contractor's obligations to perform the Work in accordance with the Contract Documents.

25.6 Construction Contractor is responsible, without reimbursement from Owner, for re-inspection fees and costs, to the extent such re-inspections are due to the fault or neglect of Construction Contractor.

25.7 Construction Contractor shall only use a certified independent testing and balancing services contractor to perform "Test and Balance" (T&B) services for this project. The T&B contractor shall be completely independent of the Construction Contractor's

mechanical and ventilating subcontractor(s). Construction Contractor shall be responsible for coordinating mechanical/ventilating (HVAC) work, including HVAC control systems and T&B work.

25.8 **T&B Submittal Requirement:** Completed T&B report shall be delivered by Construction Contractor to Owner at Substantial Completion.

25.9 In addition to all other inspection obligations of Construction Contractor under the Contract Documents, Construction Contractor shall provide structural inspections on threshold buildings pursuant to a structural inspection plan prepared by the Design Professional. The term "threshold building" as used herein shall have the meaning prescribed in the Florida Building Code. The purpose of the structural inspection plan is to provide specific inspection requirements, procedures and schedules so the building's structure can be adequately inspected for compliance with the applicable Contract Documents. Inspection of the shoring and reshoring for conformance with the shoring and reshoring plans is also required. The threshold building inspection shall be performed by a threshold inspector, certified by the State of Florida and approved by Owner. Construction Contractor shall promptly provide to Owner and Design Professional copies of all threshold building inspection reports.

26. **DEFECTIVE WORK.**

26.1 Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Contractor shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. Construction Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.

26.2 If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Contractor, at Design Professional's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Construction Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Construction Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

26.3 Owner shall have the right to order Construction Contractor to stop all or any portion of the Work if at any time Owner reasonably determines that Construction Contractor's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include, but is not limited to, Construction Contractor's failure to provide adequate labor, materials or equipment to satisfactorily maintain the various Project schedules (including the Master Project Schedule). This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Construction Contractor or any other person.

26.4 Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, the Owner may do so. Construction Contractor shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Construction Contractor shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.

26.5 If Construction Contractor fails, within a reasonable time after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Contractor fails to perform the Work in accordance with the Contract Documents, or if Construction Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Construction Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Contractor's services related thereto, take possession of Construction Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Contractor but which are stored elsewhere. Construction Contractor shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this Paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Contractor, and a Change Order or a Construction Change Directive shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Construction Contractor's defective Work. Construction Contractor shall not be allowed an extension of the Contract Time

because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

27. SUPERVISION AND CONSTRUCTION CONTRACTOR'S REPRESENTATIVE.

27.1 Construction Contractor is responsible for supervising, coordinating and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Construction Contractor is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents. Construction Contractor shall keep on the Work at all times during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Contractor. All communications given to the representative shall be as binding as if given to Construction Contractor. Owner shall have the right to direct Construction Contractor to remove and replace its Project representative or any other employee of Construction Contractor or any employee of any subcontractor from this Project, with or without cause.

27.2 The Construction Contractor shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Contractor to coordinate, inspect and provide general direction of the Work and progress of the subcontractors. Construction Contractor shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit J to the Agreement. The Construction Contractor shall not change any of those persons identified in Exhibit J unless mutually agreed to in writing by the Owner and Construction Contractor. In such case, the Owner shall have the right to approve the replacement personnel.

27.3 The Construction Contractor shall establish and maintain lines of authority for its personnel, and shall provide this information to the Owner and all other affected parties, such as the code inspectors of any permitting authority, the subcontractors, and the Design Professional. The Owner and Design Professional may attend meetings between the Construction Contractor and its subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of the Construction Contractor to administer the subcontracts.

27.4 The Construction Contractor shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Construction Contractor. The Construction Contractor shall develop and maintain a program, acceptable to the Owner and Design Professional, to assure quality control of the Work. The Construction Contractor shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Construction Contractor shall continue to exert its influence and control over

each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the Construction Contractor and the Design Professional over the acceptability of the Work, the Owner, in its sole discretion, shall have the right to determine the acceptability.

27.5 The Construction Contractor shall not employ on this Project any person who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct, nor permit any subcontractor to assign any employee of it to this Project who has been convicted of a felony or misdemeanor-level criminal charge regarding sexual abuse or misconduct.

28. PROTECTION OF WORK.

28.1 Construction Contractor shall fully protect the Work and adjacent property from loss or damage and shall bear the cost of any such loss or damage **until Substantial Completion is achieved**. If Construction Contractor or anyone for whom Construction Contractor is legally liable is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Construction Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Contractor.

28.2 The Construction Contractor shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

28.3 Construction Contractor shall not permit any unsafe loading of any structure at the Project site, nor shall Construction Contractor subject any part of the Work or adjacent property to any forces that will endanger it.

28.4 Construction Contractor shall not disturb any benchmark established by Owner with respect to the Project. If Construction Contractor, or its subcontractors, agents or anyone for whom Construction Contractor is legally liable, disturbs Owner's benchmarks, Construction Contractor shall immediately notify Owner and Design Professional. Owner shall have the benchmarks reestablished and Construction Contractor shall be liable for all costs incurred by Owner associated therewith.

29. EMERGENCIES.

29.1 Construction Contractor shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project site. Construction Contractor shall give Design Professional written notice within forty-eight (48) hours after the occurrence of the

emergency, if Construction Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Construction Contractor fails to provide the forty-eight (48) hour written notice noted above, Construction Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time. Construction Contractor is obligated to promptly report in writing to Owner all accidents relating to the Work that result in any personal injury or property damage.

30. USE OF PREMISES.

30.1 At all times during the performance of the Work, Construction Contractor shall keep all of its operations, (including, but not limited to, the use and storage of all equipment and materials), within the Project site or such other areas as may be permitted by the Contract Documents. Construction Contractor shall not use the Project site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Construction Contractor is responsible for any damage to any such area, or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.

30.2 Except as required by the Contract Documents or otherwise required in order for Construction Contractor to satisfy its safety and security obligations under the Contract Documents, Construction Contractor shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.

30.3 Construction Contractor acknowledges that Work may be performed at a particular Project site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Construction Contractor shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations.

30.4 Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Construction Contractor the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified at the time the GMP was established and such early occupancy negatively impacts Construction Contractor's cost or time of performance, Construction Contractor shall be entitled to an equitable adjustment to the Contract Amount and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents.

31. SAFETY.

31.1 Construction Contractor is responsible for the safety and protection of all persons and property on or about the Project site during the progress of the Work. Further, it is Construction Contractor's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off the Project site. Construction Contractor shall develop and implement, in accordance with the requirements of the Contract Documents (including any Owner requirements or regulations), a safety plan for the Work.

31.2 Construction Contractor shall comply with all applicable codes, laws, ordinances, rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety codes, laws, ordinances, rules and regulations. Construction Contractor shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Construction Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

31.3 At all times during the performance of the Work at the Project site, Construction Contractor shall have designated, and located on a full time basis at the Project site, a qualified individual whose responsibility shall be to monitor and enforce Construction Contractor's safety program at the Project site. Construction Contractor hereby designates its superintendent as that safety representative. Construction Contractor may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Construction Contractor's safety representative at the Project site.

31.4 Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Construction Contractor, as well as those of all subcontractors and those of any other person or entity for whom Construction Contractor is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

31.5 Construction Contractor acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Construction Contractor shall comply with the following:

31.5.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

31.5.2 All Employees shall be provided an identification badge by Construction Contractor. Such identification badge must be prominently displayed on the

outside of the Employees' clothing at all times. All Employees working at the Project site must log in and out with the Construction Contractor each day;

31.5.3 Construction Contractor shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;

31.5.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

31.5.5 All Employees shall at all times comply with the OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

31.5.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

31.5.7 When requested, Construction Contractor shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

31.5.8 Owner is committed to the education and safety of its students, faculty and employees. To that end, Construction Contractor is required to ensure that all Employees do not possess criminal records that would violate Owner's standard for employment as set forth by the Florida Department of Education. Construction Contractor shall ensure at all times that the Employees are in compliance with such standards;

31.5.9 Interaction between the Employees and the teacher and student population is strictly prohibited;

31.5.10 The Employees may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property; and

31.5.11 At all times, Construction Contractor shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, as said regulations and requirements may be modified or changed by Owner from time to time.

31.5.12 Construction Contractor expressly acknowledges and agrees that it is responsible for complying with all rules and regulations of the Jessica Lunsford Act.

Further, Construction Contractor shall comply with any rules or regulations implemented by Owner in order to comply with the Jessica Lunsford Act.

31.5.13 Construction Contractor certifies that no person or subcontractor will be assigned to work on any work pursuant to this contract that pose any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor or property of Owner. Further, Construction Contractor agrees to hold harmless Owner and its officials and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of Owner by Construction Contractor's employees or subcontractors assigned to do work pursuant to this contract.

32. PROJECT MEETINGS.

32.1 Prior to the commencement of Work, Construction Contractor shall attend a preconstruction conference with Owner and Design Professional and others as appropriate to discuss the Master Project Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, Construction Contractor shall attend any and all meetings convened by Owner or Design Professional with respect to the Project, when directed to do so by Owner or Design Professional. Construction Contractor shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by Owner or Design Professional.

33. MATERIAL SAFETY DATA SHEET.

33.1 If any chemicals, materials, or products containing toxic substances, as defined by 29 C.F.R. 1910, Subpart Z or any local, state or federal statutes or regulations, are contained in the products used on site or incorporated into the construction by the Construction Contractor or any of its subcontractors, the Construction Contractor shall provide to the Design Professional and Owner a Material Safety Data Sheet at the time of each delivery or prior to each new use of such product.

34. AUDITING RIGHTS.

34.1 Construction Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of this Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law. Construction Contractor shall require all of its subcontractors to likewise retain all of their Project records and supporting documentation. Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and supporting documentation at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Construction

Contractor's and any subcontractor's Project records and documentation as often as they deem necessary and Construction Contractor shall cooperate in any audit, inspection, or copying of the documents. These access, inspection, copying and auditing rights shall survive the termination of this Contract.

34.2 If at any time, Owner conducts such an audit of Construction Contractor's records and documentation and finds that Construction Contractor overcharged Owner, Construction Contractor shall pay to Owner the Overcharged Amount which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of 12% annum). If the Overcharged Amount is equal to or greater than \$10,000.00, Construction Contractor shall pay to Owner the Overcharged Amount and the Audit Amount which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Construction Contractor. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Construction Contractor with regard to the Project or under any other agreement between Construction Contractor and Owner. If such amounts owed Construction Contractor are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Construction Contractor hereby acknowledges and agrees that it shall pay such remaining amounts to Owner within seven (7) business days of its receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

34.3 This Article 34, including all access, inspection, copying, auditing, reimbursement and repayment rights shall survive the termination of this Contract.

35. COMPLIANCE WITH LAWS.

35.1 Construction Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project, including but not limited to those dealing with safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Construction Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing.

35.2 According to the Florida Building Code, Chapter 4, Section 423, the Orange County Public Schools, Building Code Compliance Office is responsible to ensure that all plans and facilities comply with the Florida Building Code. The Building Code Compliance Office's plans reviewers and inspectors shall perform all plan reviews and inspections to ensure compliance with the Florida Building Code. A copy of the Florida Building Code is located at the Building Code Compliance Office and is available for review upon request.

35.3 For federally funded projects, the Construction Contractor must comply with all federal rules and regulations including but not limited to those defined in the Davis Bacon Wage Rate Act, the federal Education Department General Administrative Regulations

(EDGAR), and those acts referred to by EDGAR, such as the Copeland Anti-Kickback Act (29 C.F.R. Part 3) and the Contract Work Hours and Safety Standards Act (28 C.F.R. Part 5).

36. SUBCONTRACTS.

36.1 The Construction Contractor shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Contractor will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Master Project Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval. Construction Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

36.2 A subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Construction Contractor. Construction Contractor shall be solely responsible for and have control over the subcontractors. Construction Contractor shall negotiate all Change Orders, Construction Change Directive, Field Orders and Request for Proposals, with all affected subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

36.3 When Construction Contractor submits its guaranteed maximum price proposal to Owner, Construction Contractor also shall submit to Owner a list of the names, addresses, licensing information and phone numbers of the subcontractors Construction Contractor intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all work to be self-performed by Construction Contractor must be approved in writing by Owner in its sole discretion prior to commencement of such work. Construction Contractor shall continuously update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work. Construction Contractor shall not enter into a subcontract with any subcontractor, if Owner reasonably objects to that subcontractor. Construction Contractor shall not be required to contract with anyone it reasonably objects to. As part of the Project document file to be maintained by Construction Contractor at the Project site, Construction Contractor shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses. All subcontracts between Construction Contractor and its subcontractors shall be in writing and are subject to Owner's approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Construction Contractor to the same extent Construction Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor, (2) provide for the assignment of the subcontracts

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from Construction Contractor to Owner at the election of Owner upon termination of Construction Contractor, (3) provide that Owner will be an additional indemnified party of the subcontract, (4) provide that Owner will be an additional insured on all insurance policies required to be provided by the subcontractor except workmans' compensation, (5) assign all warranties directly to Owner, (6) identify Owner as an intended third-party beneficiary of the subcontract, and (7) incorporate Exhibit E into all of its subcontracts (and require similar incorporation into all sub-subcontracts). Construction Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 36.3 and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

36.4 The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work.

36.5 Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

36.5.1 LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY

That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Design Professional or attributable to the Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and profit.

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation. Further, Construction Contractor shall incorporate terms of Paragraph 11.4 in all of its subcontracts and require all subcontractors to similarly incorporate such terms into their sub-subcontracts.

36.5.2 Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Contractor within the time and in the manner in which the Construction Contractor must submit such claims to the Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims.

37. MARKET ANALYSIS AND SOLICITATION OF BIDS.

37.1 The purpose of this Paragraph is to insure that Construction Contractor makes a genuine effort to stimulate subcontractor interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. At all times Owner shall have access to and the right to require copies of all correspondence, records, files and other bid documents (including all bid responses) with respect to the bidding process. Further, Construction Contractor shall notify Owner of the date, time and place of all bid openings and Owner shall have the right to attend any and all such bid openings. All bid openings shall be conducted in Orange County, Florida. Finally, Construction Contractor shall develop in writing subcontract bidding procedures for Owner's review and approval. Once those procedures have been approved by Owner, Construction Contractor shall not deviate from such procedures without obtaining Owner's prior written consent.

37.1.1 The Construction Contractor shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Work; Construction Contractor shall make an analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

37.1.2 Within thirty (30) days after execution of this Contract, Construction Contractor shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, Construction Contractor shall submit to Owner and Design Professional a list of potential bidders for their review and approval. Construction Contractor shall be responsible for promoting and encouraging bid competition.

37.1.3 The Construction Contractor shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.

37.2 Construction Contractor shall prepare invitations for bids and all other appropriate bid documents for all procurement of long lead items, materials and services, for

subcontractor contracts and for site utilities. All such invitations for bids and bid packages shall be submitted to Design Professional and Owner for their review and approval prior to distribution to bidders

37.2.1. Except as hereafter provided in Paragraph 37.5, all subcontracts are to be awarded to the lowest responsive and responsible bidder.

37.2.2 Subcontracts not exceeding \$25,000.00 may be awarded based upon verbal bids. Construction Contractor shall obtain a minimum of at least two (2) verbal or written bids on all such subcontracts. All such bids received by Construction Contractor shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comments prior to Construction Contractor awarding the subcontract.

37.2.3 Subcontracts exceeding \$25,000.00 must be publicly advertised for at least two (2) consecutive weeks prior to the established bid opening time and date. All such bids must be in writing and shall be received and opened in the manner and at the location, date and time established in the bid documents. All such bids received by Construction Contractor shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comment prior to Construction Contractor awarding the subcontract.

37.3 As part of its bid preparation, Construction Contractor shall review the specifications and drawings prepared by Design Professional. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by Construction Contractor shall be brought to the attention of Owner and Design Professional in written form.

37.4 For each subcontract that exceeds \$25,000, Construction Contractor shall, unless waived in writing by Owner, conduct a pre-bid conference with prospective bidders and a pre-award conference with the apparent successful bidder. Design Professional and Owner shall be invited to all such meetings. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, Construction Contractor shall transmit these to Design Professional in writing and upon receiving clarification or correction in writing from Owner or Design Professional shall issue an addendum to the bidding documents to all of the prospective bidders.

37.5 Notwithstanding the provision above requiring award of subcontracts to the lowest responsive and responsible bidder, Construction Contractor may award a subcontract to someone other than the lowest responsive and responsible bidder provided Construction Contractor has first received Owner's express written consent to such award. Owner's consent to any such award will be at Owner's sole discretion. Whenever Construction Contractor wishes to award a subcontract to someone who is not the lowest responsive and responsible bidder, Construction Contractor must notify Owner in writing, setting out in detail the reasons and justifications for the suggested award.

38. PARTNERING.

38.1 The Construction Contractor, prior to commencement of the Construction Phase Services, shall prepare and submit for the Owner's approval a proposed Partnering Program for the Project. The Partnering Program shall contain, at a minimum, procedures for the enhancement of communication and cooperation between the Owner, Construction Contractor, Design Professional, separate contractors, inspectors and other consultants and subcontractors on the Project, as well as procedures for the speedy and efficient resolution of problems and disagreements during construction. Upon approval by the Owner, the Partnering Program shall be implemented and coordinated by the Construction Contractor throughout the remainder of the Project.

39. SECURING AGREEMENT.

39.1 Construction Contractor warrants that Construction Contractor has not employed or retained any company or person, other than a bona fide employee working solely for Construction Contractor, to solicit or secure this Contract and that Construction Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. At the time this Contract is executed, Construction Contractor shall sign and deliver to Owner the Truth-in-Negotiation Certificate attached hereto and made a part hereof as Exhibit L. The Construction Contractor's compensation shall be adjusted to exclude any sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs.

40. PUBLIC ENTITY CRIMES.

40.1 By its execution of this Agreement, Construction Contractor acknowledges that it has been informed by OWNER of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

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

41. **EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION/
MWBE/LDB.**

41.1 In performing all services to be provided hereunder, Construction Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Construction Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Construction Contractor shall post in conspicuous places, available to all employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity Non-Discrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex or national origin. Construction Contractor shall comply with Owner's current MWBE and LDB policies and procedures. Construction Contractor's MWBE goal for this Project is _____ percent and Construction Contractor's LDB goal for this Project is ____ percent. With each payment application submitted by Construction Contractor, as a condition precedent to its entitlement to payment, Construction Contractor shall also submit, on the form attached as part of Exhibit G, a monthly written report to Owner concerning the status of all payments owed and paid by Construction Contractor to its various MWBE and LDB subcontractors and suppliers. Said monthly status report shall be in such form and contain such detail as may be required by Owner.

41.2 Construction Contractor shall comply with Owner's current initiative for the Construction Contractor's Subcontractors to employ at least one (1) apprentice on this Project for each subcontract involving MEP (mechanical, electrical, plumbing) and fire sprinkler systems, and if the journeyman level reaches 10, a 1:10 ratio will be the goal of apprentices to journeymen on each such subcontract. For purposes of this paragraph, "Journeyman" means a person working in an apprenticeable occupation who has successfully completed a registered apprenticeship program or who has worked the number of years required by established industry practices for that person's particular trade or occupation. With each payment application submitted by Construction Contractor, as a condition precedent to its entitlement to payment, Construction Contractor shall also submit, on the form attached as part of Exhibit G, a monthly written report to Owner concerning the number of apprentices engaged on the Project. Said monthly report shall be in such form and contain such detail as may be required by Owner.

42. **CHANGED CONDITIONS**

42.1. Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Construction Contractor as part of its scope of site investigative services required pursuant to the terms of the

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Contract Documents, then Construction Contractor shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than seven (7) calendar days after first observance of such conditions. Owner and Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Contractor's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to the Contract Amount or Contract Time, or both, for such Work. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Document or not of an unusual nature or should have been discovered by Construction Contractor as part of its investigative services, and that no change in the terms of the Contract is justified, Owner shall so notify Construction Contractor in writing, stating its reasons. Claims by Construction Contractor in opposition to such determination by Owner must be made within seven (7) calendar days after Construction Contractor's receipt of Owner's written determination notice. If Owner and Construction Contractor cannot agree on an adjustment to the Contract Amount or Contract Time, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the parties.

END OF GENERAL TERMS AND CONDITIONS

EXHIBIT B

SUPPLEMENTAL TERMS AND CONDITIONS

The following Supplemental Terms and Conditions hereby amend, modify and supersede in the event of a conflict the terms of the Agreement and the General Terms and Conditions attached thereto as Exhibit A.

Construction Contractor shall provide the Owner, its representatives and the Design Professional with copies of a Policy and Procedure Manual (total number of copies not to exceed ____) developed and updated in accordance with the following requirements:

Upon execution of the Agreement, the Construction Contractor shall develop a draft of the comprehensive Policy and Procedure Manual describing the services to be provided by the Construction Contractor per the Contract Documents. This shall provide a plan for the control, direction, coordination and evaluation of the Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of the Construction Contractor, Owner and Design Professional; Work flow diagrams; and strategy for bidding and subcontracting the Work. The Owner shall have the right to review the Policy and Procedure Manual and to approve its content and format. The Policy and Procedure Manual may be updated as necessary throughout the Pre-Construction and Construction Phases, but substantive changes will not be made without the Owner's prior written concurrence. Five (5) copies of the Policy and Procedure Manual and any updates shall be submitted to the Owner and Design Professional. In developing the Policy and Procedure Manual, the Construction Contractor shall coordinate and consult with the Owner and the Design Professional. The initial manual shall be submitted to the Owner for approval.

Contents of Policy and Procedure Manual: The Policy and Procedure Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Policy and Procedure Manual shall include, as a minimum, the following sections:

Project Definition: The known characteristics of the Project and sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project and sub-projects.

Project Goals: The schedule, budget, physical, technical and other objectives for the Project shall be defined.

Project Strategy: A narrative description of the Project delivery methods which shall be utilized to accomplish the Project goals.

Project Work Plan: A matrix display of the Work to be performed by the Construction Contractor, as well as the services and items to be

furnished by the Design Professional and the Owner during each phase of the Project.

Project Organization: A summary organization chart showing the interrelationships between the Owner, the Construction Contractor and the Design Professional, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Contractor and Design Professional, showing organizational elements participating in the Project shall be included.

Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Design Professional, and Construction Contractor. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the Project. The Construction Contractor shall develop a similar chart for the personnel within its own organization who are assigned to the Project, as well as for the Design Professional's and Owner's personnel assigned to the Project from data supplied by them.

Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and change orders.

Written Procedure: The Construction Contractor will provide written procedures for communications and coordination required between the Construction Contractor, Design Professional and Owner throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications

Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from Owner, Construction Contractor and Design Professional, as well as from all subcontractors, subconsultants and suppliers of any of them. This list shall be continuously updated by Construction Contractor throughout the Project duration, with Construction Contractor distributing a copy of all updates to Owner and Design Professional.

This Policy and Procedure Manual shall be completed and submitted to the Design Professional and Owner for their review and Owner's approval as a condition precedent to payment by Owner to Construction Contractor for any services provided in the Construction Phase under this Contract.

This Policy and Procedure Manual is merely an amplification and clarification of this Contract. Any conflicts between the Policy and Procedure Manual and this Contract shall be governed by the latter.

Construction Contractor shall provide the following Project Management Information System (“PMIS”), which system shall be in place for both the Pre-Construction Phase and Construction Phase services to be provided by Construction Contractor pursuant to this Contract.

General:

Commencing immediately after the Notice to Proceed is issued to Construction Contractor by Owner, the Construction Contractor shall implement and shall utilize throughout the life of this Contract all subsystems of the PMIS.

The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions.

If requested by the Owner, the Construction Contractor shall conduct a comprehensive workshop in Orlando, Florida, for participants designated by the Owner and additional seminars as required by Owner to provide instruction with respect to the PMIS. This workshop and the seminars shall facilitate each participant’s and the Owner’s representatives’ use and understanding of the PMIS.

The PMIS shall be described in terms of the following major subsystems:

- 1.4.1 Narrative Reporting;
- 1.4.2 Schedule Control;
- 1.4.3 Cost Control and Estimating;
- 1.4.4 Project Accounting;
- 1.4.5 Accounting and Payment; and
- 1.4.6 Action Reports.

The above reports shall be submitted at least on a monthly basis and shall accompany each monthly Application for Payment.

2. Narrative Reporting Subsystem.

- 2.1. The Construction Contractor shall prepare written reports as described hereunder. All reports shall be in 8 1/2” x 11” format.
- 2.2. The Narrative Reporting Subsystem shall include the following reports:

- 2.2.1. A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
 - 2.2.2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
 - 2.2.3. A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule and an explanation of all variances from the plan. This report shall include an analysis of the various Project subschedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
 - 2.2.4. A Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations. An explanation for all variances shall be provided.
 - 2.2.5. A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.
 - 2.2.6. A Daily Construction Diary during the Construction Phase describing events and conditions on the site.
 - 2.3. The Reports outlined in subparagraphs 2.2.1 through 2.2.5 above shall be bound with applicable computer schedule reports and submitted monthly during Design and Construction Phases and shall be current through the end of the preceding month. Copies shall be delivered to the Owner and the Design Professional. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.
3. Schedule Control Subsystem.
 - 3.1. Master Project Schedule: Prior to the submittal of its first application for payment, the Construction Contractor shall submit to the Owner and Design Professional for their review and approval a Master Project Schedule covering the planning and design approvals, construction, and Owner occupancy of the Project. This schedule shall conform to the format outlined in Paragraph 3.4 below. This schedule shall serve as the framework for the subsequent development of all detailed schedules and shall be updated monthly by the Construction Contractor throughout the Project. Within fifteen (15) calendar days of the Construction Contractor's submittal, the Owner and the Design Professional shall review the schedule and provide the Construction Contractor a written list of corrections needed to approve the schedule. The Construction Contractor must make all corrections and resolve all comments within thirty (30) calendar days after its receipt of Owner's and Design Professional's comments. If the schedule is not approved within said thirty (30) calendar days, the Owner and Design Professional will withhold all Contract payments until the schedule is approved. The acceptance of the schedule by the Owner and Design Professional in no way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment,

and any other aspect of the proposed schedule. The Construction Contractor is and shall remain solely responsible for the planning and execution of all Work in order to meet Project milestones or Contract completion dates.

- 3.2. Construction Schedule: The Construction Contractor shall prepare and submit to the Owner and Design Professional, for their review and approval, a Construction Schedule. This schedule shall conform to the format outlined in Paragraph 3.4 below. The approved Construction Schedule shall be attached to the GMP Amendment. The Construction Schedule shall be integrated into the Master Project Schedule.
 - 3.2.1. Following development and approval of the Construction Schedule as aforesaid, the Construction Contractor shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to the Owner in duplicate. No additional compensation will be due the Construction Contractor for making such updates. Failure of the Construction Contractor to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for the Owner to find the Construction Contractor in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Contractor until a schedule or schedule update acceptable to the Owner is submitted.
- 3.3. The Construction Contractor shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
 - 3.3.1. Pre-Bid Schedules (Subnetworks): The Construction Contractor shall prepare a construction schedule for that portion of the Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for subcontract completion by the successful bidder. It shall show the interrelationships between the Work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the Master Project Schedule.
 - 3.3.2. Subcontractor Construction Schedules (Subnetworks): Upon the award of each subcontract, the Construction Contractor shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the bid packages, taking into account the Work schedule of the other subcontractors. The subcontractor's construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The subcontractor's construction schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
 - 3.3.3. Occupancy Schedule: The Construction Contractor shall jointly develop with the Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.

- 3.4. Schedule Format: The Master Project Schedule and the Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time, as well as being cost loaded. Further, both the Master Project Schedule and the Construction Schedule shall incorporate and be based upon the Project milestone dates set forth in Exhibit I to the Agreement.
- 3.4.1. No activity shall have a duration greater than fifteen (15) work days or less than one (1) work day. If requested by the Owner or Design Professional, the Construction Contractor shall furnish any information needed to justify the reasonableness of activity durations. Such information shall include, but not be limited to, estimated activity manpower, anticipated quantities, and production rates.
- 3.4.2. Procurement shall be identified with at least two (2) activities: fabrication and delivery. Construction Contractor shall insure that all Work activities that require a submittal are preceded by the appropriate submittal and approval activities.
- 3.4.3. Only contractual constraints shall be shown in the schedule logic. No other restraints are allowed unless approved in writing by the Owner or Design Professional. This disallowance of constraints includes the use of any mandatory start or finish dates selected by Construction Contractor.
- 3.4.4. Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity
- 3.4.5. The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.
- 3.4.6. Float is defined as the amount of time between when an activity “can start” (the early start) and when an activity “must start” (the late start). It is understood by the Owner and the Construction Contractor that float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of the float until it is depleted.
- 3.4.7. The CPM schedules must be compatible with Primavera Project Planner Software, version 5.0 or later, by Primavera Systems, Inc., Bala Cynwyd, PA. It is the Construction Contractor’s responsibility to ascertain the software compatibility with the Owner or Design Professional.
- 3.4.8. Initial Schedule Submittal Requirements:
- 3.4.8.1. Predecessor/Successor Sort
- 3.4.8.2. Total Float/Early Start Sort
- 3.4.8.3. Responsibility/Early Start Sort
- 3.4.8.4. Area/Early Start Sort
- 3.4.8.5. Logic Diagram: Produce diagram with not more than 100 activities per ANSI D (24-inch x 36-inch) size sheet. Insure

- each sheet includes title, match data or diagram correlation, and key to identify all components used in the diagram.
- 3.4.8.6. Narrative discussing general approach to completion of the Work.
- 3.4.8.7. Diskette in Primavera (P3) format.
- 3.4.9. **Schedule Update Requirements:** The Construction Contractor shall update the schedules monthly to show actual, current progress. The schedule updates shall be submitted within seven (7) calendar days of the data dates. The updates shall include:
- 3.4.9.1. Dates of activities' actual starts and completions.
- 3.4.9.2. Percent of Work remaining for activities started but not completed as of the update date.
- 3.4.9.3. Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month.
- 3.4.9.4. Predecessor/Successor Sort
- 3.4.9.5. Total Float/Early Start Sort
- 3.4.9.6. Responsibility/Early Start Sort
- 3.4.9.7. Area/Early Start Sort
- 3.4.9.8. Diskette in the required Primavera format
- 3.4.9.9. Fragnet of logic diagram for all requested logic changes.
- 3.4.9.10. Updated logic diagram as required by the Owner. At a minimum, the Owner shall require a final logic diagram at the end of the Work showing the planned and actual starts and completions.
- 3.4.9.11. A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities.
- 3.4.9.12. All update information shall be an accurate representation of the actual Work progress.
- 3.5. **Recovery Schedule:** If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, the Owner may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of the Owner's request. The Recovery Schedule shall describe in detail the Construction Contractor's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.
- 3.6. **Change Orders:** When a Change Order is proposed, the Construction Contractor must identify all logic changes as a result of the Change Order. The Construction Contractor shall include, as part of each Change Order proposal, a sketch showing all schedule logic revisions, duration changes, and the relationships to other activities in the approved Construction Schedule. This sketch shall be known as the fragnet for the change. Upon acceptance of the fragnet, the Construction Contractor will revise the Construction Schedule or current update. The logic changes required by the Change Order will be

considered incidental to the Construction Contractor's work. No separate payment will be made.

4. Cost Control Subsystem: The operation of this subsystem shall provide sufficient timely cost data and detail to permit the Construction Contractor to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that the Work will be completed at a cost which, together with the Construction Management Fee, will not exceed the GMP. Requirements of this subsystem include submissions at the following phases of the Project:
 - 4.1. Pre-Construction Phase Estimates; and
 - 4.2. At establishment of the GMP.

5. Project Accounting Subsystem: This subsystem shall enable the Construction Contractor to plan effectively and the Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, Construction Change Directives, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable the Owner to stay informed as to the overall Project status. All reports to be generated as part of this subsystem shall be consistent with the Project Funding Schedule (if any). This subsystem will be produced and updated monthly and includes the following reports:
 - 5.1. Costs Status Report representing the budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Change Orders and Construction Change Directive for each subcontract which when added to the base commitment will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.
 - 5.2. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
 - 5.3. A Detailed Status Report showing the complete activity history of each item in the Project accounting structure and includes an earned value graph. It shall include the budget, estimate, and base commitment figures for each subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.
 - 5.4. A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
 - 5.5. A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

EXHIBIT C
FORM OF PAYMENT BOND

BOND NO. _____

PUBLIC PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That _____
as Principal, and _____, as Surety, located
at _____ (Business Address) are held and
firmly bound to _____, as Obligee in the sum of
(\$ _____) for the payment whereof we bind ourselves, our heirs,
executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the ____ day of _____, 200__, with Obligee
for _____

in accordance with drawings and specifications, which contract is incorporated by
reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

Promptly makes payment to all claimants as defined in Section 255.05(1), Florida
Statutes, supplying Principal with labor, services, materials or supplies, used directly or
indirectly by Principal in the prosecution of the Work provided for in the Contract, then this
bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the
Contract or the changes do not affect Surety's obligation under this Bond.

The provisions of this bond are subject to the time limitations of Section 255.05(2). In no event will the Surety be
liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of
suits that may be filed by claimants.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 200__, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

Witnesses as to Principal

By: _____
Name: _____
Its: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

My Commission Expires: _____

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

ATTEST:

SURETY:

(Printed Name)

Witnesses as to Surety

(Business Address)

(Authorized Signature)

(Printed Name)

OR

Witnesses

As Attorney in Fact
(Attach Power of Attorney)

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____
_____, as _____, of _____
_____. Surety, on behalf of Surety. He/She is personally known to me **OR** has
produced _____ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

EXHIBIT D

FORM OF PERFORMANCE BOND

BOND NO. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That _____
as Principal, and _____, as Surety, located at _____
_____ (Business Address) are held and firmly
bound to _____, as Obligee in the sum of
_____ (\$ _____) for
the payment whereof we bind ourselves, our heirs, executors, personal representatives,
successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the _____ day of _____,
200____, with Obligee for _____.

in accordance with drawings and specifications, which contract is incorporated by
reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

Performs the Contract at the times and in the manner prescribed in the Contract;
and

Pays Obligee any and all losses, damages, expenses, costs and attorneys' fees,
including appellate proceedings, that Obligee sustains because of any default
by Principal under the Contract, including, but not limited to, all delay
damages, whether liquidated or actual, incurred by Obligee; and

Performs the guarantee of all Work and materials furnished under the Contract for
the time specified in the Contract,

then this bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the
Contract or the changes do not affect Surety's obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or
additions to the terms of the Contract or other Work to be performed hereunder, or the specifications referred to
therein shall in anyway affect its obligations under this bond, and it does hereby waive notice of any such changes,
extensions of time, alterations or additions to the terms of the Contract or to Work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time
provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance
Bond regardless of the number of suits that may be filed by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 200____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

By: _____

Its: _____

Witnesses as to Principal

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200____, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced _____ as identification.

My Commission Expires:

Notary Public (Signature)

(AFFIX NOTARY SEAL)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

ATTEST:

Witnesses as to Surety

Witnesses

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____
_____, as _____

of _____, Surety, on behalf of
Surety. He/She is personally known to me **OR** has produced
_____ as identification.

My Commission Expires: _____

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

EXHIBIT E

INSURANCE REQUIREMENTS

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

I. Workers' Compensation and Employer's Liability Insurance shall be maintained by Construction Contractor during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Workers' Compensation - Florida Statutory Requirements

Employer's Liability –

| | | |
|---------------------------|--------------|---------------|
| Bodily Injury by Accident | \$500,000.00 | each accident |
| Bodily Injury by Disease | \$500,000.00 | each employee |
| Bodily Injury by Disease | \$500,000.00 | policy limit |

The insurance company shall waive claims rights against Owner.

II. Commercial General Liability Insurance, written on an "occurrence" basis, shall be maintained by Construction Contractor. Coverage, as provided by 1986 (or later) ISO commercial general liability form, shall include, but not be limited to, Bodily Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Personal Injury and Fire Legal Liability Coverages. ISO Endorsement CG 22 80 (Limited Exclusion – Contractor's – Professional Liability) also must be provided. Completed Operations coverage must be maintained by Construction Contractor for not less than five (5) years following completion and acceptance by Owner of the Work performed by Construction Contractor at each Project Site assigned to it. Limits of coverage shall not be less than the following for Bodily Injury, including Death, Property Damage and Personal Injury Combined Single Limits:

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

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

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

\$1,000,000.00 Combined Single Limit each accident for
Bodily Injury, including Death & Property Damage Liability

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

EXHIBIT F

RELEASE AND AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF _____)

Before me, the undersigned authority, personally appeared _____,
who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$_____ paid,
_____ (“Construction Contractor”) releases and waives for itself and its subcontractors,
materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in
tort, against The School Board of Orange County, Florida, a body corporate existing under the laws of the State of
Florida (“Owner”) relating in any way to the performance of the Agreement between Construction Contractor and
Owner, dated _____, 200__, for the period from _____ to _____.

(2) Construction Contractor certifies for itself and its subcontractors, materialmen, successors and assigns, that
all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for
which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

(3) Construction Contractor agrees to indemnify, defend and save harmless Owner from all demands or suits,
actions, claims of liens or other charges filed or asserted against Owner arising out of the performance by
Construction Contractor of the Work covered by this Release and Affidavit.

(4) Construction Contractor certifies that it has paid all its subcontractors and materialmen in full all amounts
owed them from any previous payments received by Construction Contractor from Owner and has not withheld any
such amounts. In the event Construction Contractor withholds any unpaid amounts due to its subcontractors and/or
materialmen from the payment it receives from Owner with respect to the Application for Payment referenced in
paragraph 5 below, Construction Contractor agrees to immediately refund all such unpaid amounts to Owner.

(5) This Release and Affidavit is given in connection with Construction Contractor’s [monthly/final]
Application for Payment No._____.

Construction Contractor:

By: _____
Its: _____ President

Date: _____

Witnesses

[Corporate Seal]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/She is personally known to me or has produced a _____ (state) driver's license no. _____ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

(Title or Rank)

(Serial Number, if any)

EXHIBIT G

CONSTRUCTION CONTRACTOR APPLICATION FOR PAYMENT

**[INSERT FORM OF PAYMENT APPLICATION, MWBE STATUS REPORT,
AND SCHEDULE OF VALUES]**

EXHIBIT H
CHANGE ORDER

CHANGE ORDER NO. _____

CONTRACT NO. _____

TO: _____

DATE: _____

PROJECT NAME: _____

PROJECT NO.: _____

Under our AGREEMENT dated _____, 200__.

You hereby are authorized and directed to make the following change(s) in accordance with terms and conditions of

the Agreement:

For the (Additive) (Deductive) Sum of: _____
(\$_____).

Original Agreement Amount \$_____

Sum of Previous Changes \$_____

This Change Order (Add) (Deduct) \$_____

Present Agreement Amount \$_____

The time for completion shall be (increased/decreased) by _____ calendar days due to this Change Order. Accordingly, the Contract Time is now _____ (_____) calendar days and the Substantial Completion date is _____. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted: _____, 200__

Construction Contractor:

OWNER:
The School Board of Orange County, Florida

By: _____

By: _____

DESIGN PROFESSIONAL:

By: _____

EXHIBIT I

MASTER PROJECT SCHEDULE MILESTONES

EXHIBIT J

CONSTRUCTION CONTRACTOR'S STAFFING SCHEDULE

I. Pre-Construction Phase Services:

| <u>Name</u> | <u>Title/Position</u> | <u>Company Affiliation</u> | <u>% Assigned to Project</u> |
|-------------|-----------------------|----------------------------|------------------------------|
|-------------|-----------------------|----------------------------|------------------------------|

II Construction Phase Services:

| <u>Name</u> | <u>Title/Position</u> | <u>Company Affiliation</u> | <u>% Assigned to Project</u> |
|-------------|-----------------------|----------------------------|------------------------------|
|-------------|-----------------------|----------------------------|------------------------------|

EXHIBIT K

**GMP AMENDMENT TO AGREEMENT BETWEEN
OWNER AND CONSTRUCTION CONTRACTOR**

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER
AND CONSTRUCTION CONTRACTOR FOR _____
AGREEMENT NO. _____**

Pursuant to Sections 4B and 7A of the Agreement, dated _____, between The School Board of Orange County, Florida ("Owner") and _____ ("Construction Contractor"), with respect to the construction of the Owner's _____ ("Project"), the Owner and Construction Contractor hereby agree to amend and modify the Agreement by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

ARTICLE 1

SCOPE OF WORK

The scope of the Work consists of the construction of a _____, in accordance with the Agreement, this Amendment and the other Contract Documents listed as Attachments 1 through ___ below, which are hereby incorporated into and made a part of the Amendment by this reference:

| <u>Attachment No.</u> | <u>Description</u> | <u>Pages</u> | <u>Date</u> |
|-----------------------|--|-----------------|-------------|
| 1. | List of Drawings and Specifications | ___ through ___ | _____ |
| 2. | Allowance | ___ through ___ | _____ |
| 3. | Assumptions and Clarifications | ___ through ___ | _____ |
| 4. | Completion Schedule | ___ through ___ | _____ |
| 5. | Schedule of Value | ___ through ___ | _____ |
| 6. | List of Itemized General Conditions | ___ through ___ | _____ |
| 7. | List of Subcontractors and Major Suppliers | ___ through ___ | _____ |

ARTICLE 2

GUARANTEED MAXIMUM PRICE

2.1 Construction Contractor's Guaranteed Maximum Price ("GMP") for the Work, including the estimated Cost of the Work as defined in Section 5 of the Agreement and Construction Contractor's Fee as defined in Section 4 of the Agreement, is _____ (\$_____).

2.2 The GMP includes material that may be purchased directly by the Owner ("Owner Direct Purchases"). The estimated value of materials that may be purchased directly by the Owner is _____ (\$_____). Construction Contractor will initially process one (1) deductive Change Order under this Agreement for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner's review and execution.

2.3 The Construction Contractor's Fee for the entire Work anticipated on this Project is hereby established as a lump sum amount of _____ (\$_____), said lump sum amount is included within the above noted GMP.

2.4 The General Condition expenses for the entire Work anticipated on this Project are hereby established as a lump sum amount of _____ (\$_____), said lump sum amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. _____. Except as said lump sum amount for General Condition expenses may be expressly adjusted by Change Order or Construction Change Directive, Construction Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted lump sum amount and Construction Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above lump sum amount.

2.5 Monthly installment payment of the Construction Contractor's Fee and the General Condition expenses shall be based upon the percent completion of the designated portion of the Work for each particular month.

2.6 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the lump sum General Condition expense amount noted in paragraph 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of _____ (\$_____). Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the construction documents. Construction Contractor shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's express written authorization to proceed. The Construction Contractor acknowledges and agrees that any work which is to be charged against the contingency allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Construction Contractor's basic Work compensated within the GMP and not chargeable against the Owner's Contingency Allowance. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency expenditures. Further, any contingency expenditures become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end of the job will be credited from the guaranteed

maximum price. Construction Contractor has no entitlement to any portion of any unused contingency.

2.7 The parties have agreed to establish an allowance within the GMP for _____ in the amount of _____ (\$ _____). Construction Contractor shall not proceed with any portion of the Work associated with the aforesaid allowance ("Allowance Work") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments _____ through _____.

2.8 Pursuant to Exhibit A, Paragraph 12.4 of the Agreement, if at the time final payment is made to Construction Contractor the total Cost of the Work has been increased by approved Change Orders in an amount causing the original GMP as set forth in this Amendment to be exceeded by more than _____ (\$ _____), then Construction Contractor shall be entitled to an increase in the Construction Contractor's Fee in the amount of _____ (_____%) of the amount exceeding the sum of _____ (\$ _____) plus that original GMP amount.

2.9 Construction Contractor recognizes that this Contract includes work for trench excavation in excess of five feet deep. Construction Contractor acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Contractor certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Contractor agrees to comply with all such required trench safety standards.

2.9.1 The amount of _____ dollars (\$ _____) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the GMP.

2.10 Construction Contractor is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Construction Contractor.

ARTICLE 3 CONTRACT TIME

3.1 The Construction Phase Commencement Date for the Work is _____. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is _____ (_____) days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS _____.

3.2 Pursuant to this Agreement, the parties have established a liquidated damage rate for reasons stated therein, which the parties acknowledge and agree apply to this Amendment and Construction Contractor's responsibility to complete the Work within the Contract Time as stated herein. Accordingly, the liquidated damage rate established in this Agreement shall be assessed from Construction Contractor for each calendar day Construction Contractor fails to achieve Substantial Completion for the Designated Work within the Contract Time.

ARTICLE 4

MISCELLANEOUS

4.1 Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Contractor agree that the terms of this Amendment shall prevail and control.

OWNER

Construction Contractor

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Attachment 1
List of Drawings, Specifications, and Addendums

See Attached

Attachment 2
Schedule of Values

See Attached

Attachment 3
Itemized General Condition Expenses

See Attached

Attachment 4
List of Alternates

Attachment 5
Assumptions and Clarifications

See Attached

Attachment 6
Completion Schedule

See Attached

Attachment 8
List of Sub-Contractors and Major Suppliers

See Attached

EXHIBIT L

TRUTH-IN-NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, «**Company**» hereby certifies that wage rates and other factual unit costs supporting the compensation for the construction management services of CONSTRUCTION CONTRACTOR to be provided under this Agreement, concerning «**Project**» are accurate, complete and current as of the time of contracting.

CONSTRUCTION CONTRACTOR:

«COMPANY»

By: _____

Print Name: «Signatory»

Title: «Sigtitle»

Date: _____

EXHIBIT M

CERTIFICATE OF INSURANCE FORM