

Division of Facilities & Construction
LEON COUNTY SCHOOLS

RFQ 341-2015



**CONSTRUCTION MANAGER AT RISK
FOR
RUEDIGER ELEMENTARY SCHOOL
NEW CONSTRUCTION, REMODELING AND RENOVATIONS &
SITE IMPROVEMENTS PROJECT**

School Board Members

Maggie B. Lewis-Butler, Board Chairperson
Dee Dee Rasmussen, Vice Chair
Dee Crumpler, Board Member
Georgia "Joy" M. Bowen, Board Member
Alva Swafford Striplin, Board Member

Jackie Pons,
Superintendent of Schools
www.leonschools.net

----November 24, 2014----

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Table of Contents

RFQ 341– 2015 CM@R for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

PART	TITLE
I	NOTICE – “REQUEST FOR CONSTRUCTION MANAGER AT RISK SERVICES FOR RUEDIGER ELEMENTARY SCHOOL NEW CONSTRUCTION, REMODELING AND RENOVATIONS & SITE IMPROVEMENTS PROJECT”
II	SCOPE OF SERVICES PROJECT DESCRIPTION PROJECT SCHEDULE
III	QUALIFICATION STATEMENT POLICY AND PROCEDURE
IV	QUALIFICATION STATEMENT GUIDELINES
V	QUALIFICATION STATEMENT FORMAT
VI	QUALIFICATION STATEMENT CHECKLIST
VII	SHORTLIST INTERVIEW & PRESENTATION GUIDELINES
VIII	EXHIBITS
	EXHIBIT A – AFFIDAVIT
	EXHIBIT B – SWORN STATEMENT – PUBLIC ENTITY CRIME/JESSICA LUNDSFORD ACT
	EXHIBIT C – CONFLICT OF INTEREST DISCLOSURE FORM
	EXHIBIT D – PROHIBITION AGAINST CONTINGENCY FEES
	EXHIBIT E – DEBARMENT Q & A AND DEBARMENT FORM
	EXHIBIT F – AFFIDAVIT FOR CLAIMING LOCAL PURCHASING PREFERENCE (NEW)
	EXHIBIT G – DRAFT COPY – “AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK”
	EXHIBIT H – DRAFT COPY – LEON COUNTY SCHOOL GENERAL CONDITIONS

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Division of Facilities & Construction
3420 West Tharpe Street, Suite 100
Tallahassee, Florida 32303

Part I – Notice

RFQ 341– 2015 for CM@R Services for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

Pursuant to Section 287.055, Florida Statutes, and the Chapter 6A-2.0010, F.A.C. the School Board of Leon County, Florida, will consider the contracting of a Construction Manager at Risk for construction management services for the above referenced project.

In accordance with S.R.E.F., 2012, Chapter 4, Section 4.1, Prequalification of Contractors for Educational Facilities Construction: **ONLY** the state certified contractors who are currently prequalified for the term – January 01, 2014 through December 31, 2014 by the Leon County School Board may submit their qualifications for this project.

Prequalified firms who are interested in providing construction management services to the Leon County School Board are hereby notified and shall submit five (5) bound Qualification Statements no later than 4:00 p.m. local time on Monday, December 15, 2014 to the reception desk of the Leon County School Board, Division of Facilities, 3420 W. Tharpe Street, Suite 100, Tallahassee, FL 32303, (850)617-5900. Qualification Statements received after the deadline will **not** be considered. Label shall read:

RFQ 341-2015 Construction Manager at Risk Services for Ruediger Elementary School New Construction, Remodeling and Renovations & Site Improvements Project, Attn: Danny Allbritton, Director of Construction.

Instructions for completion and submission of the Qualifications Statement may be obtained on our website at <http://wwwold.leon.k12.fl.us/public/business/purchasing/FacilitiesConstructionRFQ.html> or request assistance from Leon County School Board, Division of Facilities, 3420 West Tharpe Street, Suite 100, Tallahassee, Florida 32303, (850)617-5900. Qualification Statements submitted via facsimile or electronic mail will **not** be considered.

A pre-submittal meeting will be held to review the requirements of the Qualifications Statement at 10:00 a.m. local time on Wednesday, December 10, 2014 in Conference Room Division of Facilities (see above). Interested firms are required to comply with all requirements of this Request for Qualifications.

The following dates and activities tentatively identify the project milestones:

Pre-Submittal Meeting	Wednesday, December 10, 2014	10:00 AM Local Time
Submittal Deadline	Monday, December 15, 2014	4:00 PM Local Time
Screening Date (Selection Committee)	Tuesday, January 13, 2015	
Interview Date (Selection Committee)	Tuesday, January 27, 2015	
Tentative Recommendation to Board	Tuesday, February 10, 2015	
Board Approval	Tuesday, February 10, 2015	

The School Board of Leon County, Florida reserves the right to waive any informality in the selection process and to reject any or all qualification statements when such a waiver or rejection is in the best interest of the School Board of Leon County.

The Leon County School Board is an equal opportunity agency.

Publish Dates: **November 24, December 1 and 8, 2014**

All public advertisements for construction and facilities projects are published in the Tallahassee Democrat.

Part I- Notice

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Division of Facilities & Construction
3420 West Tharpe Street, Suite 100
Tallahassee, Florida 32303

Part II – Scope of Services

RFQ 341–2015 CM@R Services for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

Project Scope

The Leon County School Board is seeking Construction Management at Risk Services to work with the Department of Facilities, Planning and Construction and the selected Architect of Record on the project described below. The selected Construction Management firm shall be responsible for the successful, timely, and economical completion of the project.

The construction management services shall include, but not be limited to the following: preconstruction services (to the extent applicable), bidding and contracting with all subcontractors, supervision of the work, coordinating scheduling of the work, and working with the architect and engineer of record on the project. For more detailed information, please refer to the attached draft Agreement Between Owner and Construction Manager.

This agreement is divided into two parts as follows:

Part A – Preconstruction Phase

Part B – Construction Phase

The purpose of this Request for Qualifications (RFQ) is to select the most qualified Firm to provide the requested services.

Project Description

Ruediger Elementary School, 526 W. 10th Avenue Tallahassee FL 32303

Site Improvements		\$1,250,000.00
New Construction	2,313 sq. ft.	\$414,027.00
Renovate Buildings 1 -13	62,251 sq. ft.	1,500,000.00
Total Estimated Construction Budget		\$3,164,027.00

The Construction Documents are contracted 64,564 square feet. The estimated construction budget is \$3,164,027.00. The Architect of Record has not been established.

LCSB will issue building permits, certificate of occupancy, and provide building code inspection.

Project Schedule

RFQ Advertisement:	November 24, December 1 and 8, 2014	
Pre-submittal meeting:	Wednesday, December 10, 2014	10:00 AM Local Time
Submittal Deadline:	Monday, December 15, 2014	4:00 PM Local Time
Screening Committee:	Tuesday, January 13, 2015	
Short List Contacted:	Tuesday, January 13, 2015	
Interview Committee:	Tuesday, January 27, 2015	
Recommendation to Superintendent:	Shall be placed publicly on LCS Board Docs.	
Tentative Board Approval to Negotiate:	Tuesday, February 10, 2015	
Negotiations may begin:	After Board approval & successful negotiation.	
Contract submitted for Board Approval:	To next available Board Meeting.	
CM@R Notice to Proceed	To be determined after board approval of negotiated Contract.	



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3420 West Tharpe Street, Suite 100
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Part III –Qualifications Statement Procedures

RFQ 341 – 2015 Construction Manager at Risk for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

1. This Part shall serve to provide currently interested Leon County School Board prequalified firms with specific information as to the Procedures for the Selection of a Construction Manager Firms where the method of compensation is a Negotiated Fee on a Guaranteed Maximum Price, or other methods of compensation depending upon the scope of services. Pursuant to Chapter 1013, Florida Statutes, the Florida Consultant's Competitive Negotiation Act (CCNA), Section 287.055 Florida Statutes, and Rule 6A-2.0010, Florida Administrative Code (FAC). Leon County Schools will consider the contracting of the most qualified firm to provide construction management services as outlined in the Scope of Services.
2. Interested firms must hold a Leon County School Board - Prequalification Certificate for the term January 01, 2014 – December 31, 2014. Corporations must be registered in the State of Florida by the Department of the State, Division of Corporations, at the time of submittal.
3. Interested firms shall submit five (5) bound qualification statements in the format provided in Section V. Qualification Statements shall be received at the Division of Facilities and Construction, 3420 West Tharpe Street, Suite 100, Tallahassee, Florida 32303 as indicated in Part II- Scope of Services. Submittals received after 4:00 p.m. and those received via facsimile or electronic mail **will not** be considered.
4. A pre-submittal meeting will be held to review the requirements of the Qualifications Statement at the time indicated in Part II – Scope of Services, in the Conference Room, at the Division Construction, 3420 West Tharpe Street, Suite 100, Tallahassee, Florida 32303.
5. All questions concerning the request for qualifications or procedures to be followed should be directed by E-mail to rfq.construction@leonschools.net . The pre-submittal meeting is the only opportunity to communicate directly with the Facilities Planning & Construction Department to clarify questions about the submittal or selection process. All interested firms are hereby cautioned **not** to contact any member of the selection committee, employee of the School Board, or School Board member regarding this solicitation, nor attempt to persuade or promote indirectly, or through other channels.
6. The selection committee will consist of the following: Ronnie Youngblood, Divisional Director for, Maintenance, Transportation and Warehouse; June Kail, Director of Purchasing; Manny Joanos, Divisional Director of Energy, Nutrition Services, & Purchasing; Dexter Martin, Small Business Enterprise Director; Buddy Tricquet, Safety & Security.
7. The Qualification Statements received in response to this RFQ will be evaluated and ranked by the Selection Committee using the Checklist and Scoring Summary provided in Part VI.
8. The Selection Committee will then select at least the top three ranked firms to attend the Presentation/Interview, which is scheduled in Part II – Scope of Services.

9. The Selection Committee will evaluate the firms based on criteria set forth in Part VII. A final ranking shall be established by totaling the sum of the scores (Parts VI and VII) given to each firm by all members of the Selection Committee.
- ~~10.~~ 10. The Selection Committee will submit its recommendation to the Superintendent who shall take it to the School Board for review and approval.
11. Once the Leon County School Board has ratified the final rankings, the Leon County School Board, or its designee shall engage the highest ranked firm in negotiations for purposes of negotiating an Agreement and a Guaranteed Maximum Price (GMP). In so doing, the Leon County School Board or its designee, shall determine and negotiate compensation that is fair, competitive, and reasonable for the services to be supplied. Contract negotiation shall be conducted in accordance with section 287.055(5).
12. The Leon County School Board shall contain a prohibition against contingent fees as follows: The Construction Manager at Risk/General Contractor (CM/GC) warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CM/GC to solicit or secure this agreement and that it has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CM/GC any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For the Breach or violation of this provision, the Leon County School Board shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
13. The costs incurred by interested firms in submitting its qualification package are considered an operational cost of the firm and shall not be passed or borne by the Board under any circumstances. Leon County School Board accepts no responsibility for any expenses incurred by those firms offering their services to the Board in the preparation of a response to either this Request for Qualifications or subsequent requests.
14. To demonstrate capability for performance of the required services, interested firms must reply with copies of qualifications, past experience, and samples of brochures, material, etc., which support previous efforts of a similar nature. Information must also be furnished indicating the identification of the Construction Manager at Risk management team.
15. The Leon County School Board reserves the right to waive any informality in the selection process and to reject any or all Statements of Qualification.
16. Notwithstanding anything contained herein, the Board may reject any proposals which, in the Board's sole opinion, contain inaccurate information. In addition, the Board shall have the sole discretion to declare a contractor delinquent and to suspend or revoke a prequalification certificate.
17. All contractors and subcontractors are reminded of screening requirements the legislature enacted in s.1012.467, Florida Statutes, referred to as the "Jessica Lunsford Act".
18. The Leon County School Board reserves the right to award a contract to the next most qualified firm, if an acceptable agreement cannot be negotiated with a higher ranked firm.

19. The successful firms shall not be discriminatory towards any person in accordance with federal, state and local law.

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3420 West Tharpe Street, Suite 100
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Part IV – Qualifications Statement Guidelines

RFQ 341–2015 Construction Manager at Risk Services for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

1. To facilitate analysis of its qualifications package, the Respondent shall prepare its qualifications package in accordance with the instructions outlined in this Request. If the Respondent's qualifications package deviates from these instructions, such qualifications package may, in the Leon County School Board's sole discretion, be rejected.
2. The Leon County School Board emphasizes that the Respondent concentrate on accuracy, completeness, and clarity of content.
3. To the greatest extent possible, each section shall be written on a standalone basis so that its contents may be evaluated with a minimum of cross referencing to other sections of the qualifications package. Information required for evaluation of qualifications, which is not found in its designated section, will be assumed to have been omitted from the qualifications package.
4. The response to this request for qualifications must be presented as indicated in the "Qualifications Statement Format" in Part V and shall not exceed **60 pages** (including any tables, organization, project team charts and/or pictures). Submittal items in Section 7 will not be counted in the **60-page limit**.
5. Page size shall be 8.5 x 11 inches, not including foldouts. Pages shall be single-spaced. The text size shall be 11 point or larger. Use at least one (1) inch margins on the top and bottom and three-quarter (3/4) inch side margins. Pages shall be numbered sequentially by section.
6. Legible tables, charts, graphs and figures shall be used wherever practical to depict organizations, systems and layouts, implementation schedules, plans, etc. These displays shall be uncomplicated, legible and shall not exceed eleven (11) by seventeen (17) inches in size. Foldout pages shall fold entirely within the section, and count as a single page. Foldout pages may only be used for large tables, charts, graphs, diagrams and schematics; and not for pages of text.
7. All sections of the qualifications package should be bound, with section tabs, which shall permit the qualifications package to lie flat when opened. Staples shall not be used.

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Division of Facilities & Construction
3420 West Tharpe Street, Suite 100
Tallahassee, Florida 32303

Part V - Qualification Statement Format

RFQ 341 – 2014 Construction Manager at Risk for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

The following format is intended to provide the Selection Committee with a uniform and consistent format for reviewing and evaluating the qualifications of each interested firm. Interested firms must respond to each item and complete the applicable information, provide copies of requested licenses, certificates, checklists, and other requested documentation within each section as indicated below.

The Selection Committee shall meet to review the Qualification Statements for compliance with the requirements and provide an objective evaluation of all interested firms. The Committee's evaluation of interested firms shall be on the basis of the specific Project needs and the professional services offered by interested firms as stated in the Qualification Statement submitted. The Qualification Statements are reviewed based upon a point system, one hundred (100) points being the total, in accordance with the criteria listed below.

After the firms have been evaluated based on their written applications, as determined by each committee member on the criteria listed below, the points will then be added collectively. The firms will be ranked by totaling the scores given to each firm by all members of the Selection Committee.

The three (3) firms with the highest scores who will be more closely considered through a presentation of their approach to perform these particular projects. Refer to Part VI – Short List Interviews and Presentation for interview guidelines and scoring criteria.

Provide the requested information in the format outlined below;

COVER SHEET

(non-scored)

Provide a cover sheet indicating the following;

1. Firm Name
2. Request for qualifications number: RFQ 341-2015
3. Project title: Construction Manager at Risk for Ruediger Elementary School New Construction, Remodeling and Renovations & Site Improvements Project
4. Submittal date and time as indicated in Part II – Scope of Services

SECTION 1 - INTRODUCTION

A. Letter of Introduction

(10 Points)

Provide a brief profile of the responding firm addressed in a letter to the Director of Construction, not to exceed 1 single-sided page, including the following information;

1. a brief history of the company and location,
2. corporate structure,
3. ownership interest,

4. length of company's existence
5. project team location,
6. distance project team is from LCS Division of Facilities & Construction

B. Table of Contents

Provide a Table of Contents indicating each required section and formatted in the order provided.

C. Introductory Narrative

Provide a brief introductory narrative highlighting the overall qualifications contained in the total qualification package, maximum one single sided page.

D. LCS Prequalification Certificate

Provide a copy of the current prequalification certificate for the term January 1, 2014 – December 31, 2014. Firms will be evaluated on a pass/fail basis on their ability to secure bonding for the project based on the bonding capacities prequalification certificate. Respondents whose bonding capacities do not meet the project requirements will not be evaluated.

SECTION 2 - EXPERIENCE AND PAST PERFORMANCE

A. Related project experience

(20 Points)

List three (3) projects your firm has provided/is providing Construction Management at Risk Services similar in scope to the proposed Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project. In no case shall fewer than three projects be submitted. In determining which projects are more related, consider: related size and complexity; how many members of the proposed team worked on the listed project; and how recently the project was completed. List the projects in priority order, with the most related project listed first. For each of the listed projects, provide the following information:

1. Name and location of the project.
2. Project Owner's representative name, address and phone number.
3. The name, address and telephone number of the project architect.
4. Size of project - gross area of construction, number of facilities, etc.
5. Owners Construction Budget.
6. Negotiated Guaranteed Maximum Price.
7. Final construction value and cost per square foot.
8. Indicate the number of change orders on the project and include the following detail;
 - a. Change order increase/decrease amount
 - b. Reason for change order (owner driven / error or omission, or other)
9. Contracted substantial and final completion dates.
10. Actual substantial completion and final completion dates. (if the project is not complete, indicate the percent complete and whether or not it is on schedule)
11. Project type - new construction, addition, remodeling, renovation, re-use.
12. Work those respondents staff was responsible for.
13. Present project status - percentage of completion.

14. Listing of Project Manager and other key professionals and personnel assigned to this project.
15. Why was Construction Management chosen for each project?

SECTION 3 – PROJECT TEAM

Describe the proposed organizational structure for this project, indicating key personnel and their relationship to this project and other team members.

A. Office Staff

(10 Points)

Describe the general and specific project related capability of the office staff and indicate the adequate depth and abilities of the organization which the Respondent can draw upon as needed. This will include management, technical, and support staff. Give brief resumes of key persons to be assigned to the project including the following information.

1. Name and title
2. Current job assignment for other projects
3. Percentage of time to be assigned to this project
4. How many years with this firm
5. How many years with other firms
6. Experience
 - a. Types of projects
 - b. Size of projects (dollar value SF of project)
 - c. What were the specific project involvements?
 - d. Education
 - e. Active registration
 - f. Other experience and qualifications that are relevant to this project

B. On Site Staff

(10 Points)

Describe the ability and experience of field staff with specific attention to project related experience. Give brief resumes of key persons to be assigned to the project including the following information.

1. Name and title
2. Current job assignment for other projects
3. Percentage of time to be assigned to this project
4. How many years with this firm
5. How many years with other firms
6. Experience
 - a. Types of projects
 - b. Size of projects (dollar value & Gross Building Area of project)
 - c. What were the specific project involvements?
 - d. Education
 - e. Active registration
 - f. Other experience and qualifications that are relevant to this project

C. Technical Services Capability**(10 Points)**

1. Describe the capabilities of your staff to provide the technical services required for:
 - a. Option analysis/value engineering
 - b. Design review and construction analysis
 - c. Budget estimating
 - d. Life cycle cost analysis
 - e. Construction Scheduling
 - f. Quality Control (Design & Construction)
 - g. Cost control
 - h. Change Order negotiation
 - i. Claims management
 - j. Project close-out
 - k. Transition planning

D. Organizational Chart**(10 Points)**

1. Develop a chart of individual staff members to be assigned responsibilities. Include office and on-site staff. Show the organizational chart as it relates to the project indicating key personnel and their relationship. It should be understood that it is the intent of the Leon County School Board to insist that those indicated as the project team in the RFQ response actually executes the project.

SECTION 4 – PROJECT APPROACH AND SCHEDULING METHODOLOGY**A. Project Approach****(10 points)**

Explain your firm's approach to task management to include, but not be limited to quality assurance, cost control, and reporting to the Owner's Representative and/or Project Management Team.

1. Respondent shall present a plan setting forth the approach and program for implementing and carrying-out construction management services to include: information management systems, document control, records management, procurement of equipment and supplies, engaging local contractors to participate in bidding of project, project status reporting and project administrative services.
2. Respondent shall describe their safety program, safety record, and safety litigation record as a contractor and/or construction manager.
3. Respondent shall describe how the proposed organizational structure will ensure orderly communications, distribution of information, effective coordination of activities, and accountability.
4. Detail your Firm's ability to adhere to scope and schedule in effort to ensure the success of the Project.

B. Scheduling**(10 points)**

The Respondent's demonstration of a coherent and specific plan for completing this project within the project parameters; documenting the services to be provided; and showing the interrelationship of all parties. Respondents shall describe their scheduling methods, approach and plan for implementing construction management services, and a program for construction quality assurance and schedule adherence.

For each of the three projects listed under Experience and Past Performance. A comparison of the firm's project profile should indicate their ability to hold to original schedules and budgets. Respondents shall draw parallels between these projects and the proposed project in the following areas:

- A. Describe the way in which your Firm developed and maintained project schedules. Include specific examples of scheduling challenges, and how the Firm helped solve them. Methods for assuring that subcontractor's adherence to schedule should be highlighted. Submit an example of a project schedule.
- B. Describe the types of records, reports, monitoring systems and information management systems utilized in the management of each project. Provide examples of each report used.
- C. Describe the way your Firm maintained quality control during the preconstruction and construction phases. Provide specific examples of how these techniques were used.
- D. Describe your Firm's specific construction management services and how they benefited the client in terms of cost, quality, schedule, safety, etc.

C. Small business Participation

(10 points)

Describe how the firm will meet the requirements for minority and/or small business participation in sub contracts. Set forth the amount of participation for past projects, as a percentage of guaranteed-maximum-price, less Construction Manager's Fee.

Section 5 – Draft Contract, Miscellaneous Information and Addenda

(non-scored)

All exceptions to the attached LCS draft "Agreement Between Owner and Construction Manager at Risk" and the "LCS General Conditions" must be included in this section. If exceptions to the contract are not included in the submittal, it will be the Boards understanding that your Firm will accept the contract as presented in this RFQ. Any and all addenda shall be acknowledged in this section.

Section 6 – Qualifications Statement Checklist

(non-scored)

Complete and include a copy of the Qualifications Statement Checklist from Part VI of this package.

Section 7 – Exhibits

(non-scored)

Complete and include the following: Exhibits A, B, C, D, E and F signature documents to be submitted with the Qualifications Statement.

- EXHIBIT A – AFFIDAVIT (SIGNATURE REQUIRED AND SUBMIT WITH QUALIFICATION STATEMENT)
- EXHIBIT B – SWORN STATEMENT – PUBLIC ENTITY CRIME/JESSICA LUNDSFORD ACT (SIGNATURE REQUIRED AND SUBMIT WITH QUALIFICATION STATEMENT)
- EXHIBIT C – CONFLICT OF INTEREST DISCLOSURE FORM (SIGNATURE REQUIRED AND SUBMIT WITH QUALIFICATION STATEMENT)
- EXHIBIT D – PROHIBITION AGAINST CONTINGENCY FEES (SIGNATURE REQUIRED AND SUBMIT WITH QUALIFICATION STATEMENT)
- EXHIBIT E – DEBARMENT Q & A AND DEBARMENT FORM (SIGNATURE REQUIRED AND SUBMIT WITH QUALIFICATION STATEMENT)
- EXHIBIT F – AFFIDAVIT FOR CLAIMING LOCAL PURCHASING PREFERENCE (SIGNATURE REQUIRED AND SUBMIT WITH QUALIFICATION STATEMENT)
- EXHIBIT G – DRAFT COPY – "AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK"
- EXHIBIT H – DRAFT COPY – LCS GENERAL CONDITIONS (Submit an Acknowledgement Letter for G & H)

Section 8 – Executive Summary

(non-scored)

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Part VI– Checklist and Scoring Summary

RFQ 341-2015 CM@R for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

Cover Sheet		(non-scored)
Section 1	Introduction Letter of Introduction Table of Contents Introductory Narrative LCS Prequalification Certificate	10 Points
Section 2	Experience and Past Performance Related project experience	20 Points
Section 3	Project Team Office Staff On Site Staff Technical Services Capability Organizational Chart	10 Points 10 Points 10 Points 10 Points
Section 4	Project Approach and methodology Project approach Scheduling Methodology Small Business Participation	10 Points 10 Points 10 Points
Section 5	Draft Contract, Miscellaneous Information and Addenda	(non-scored)
Section 6	Qualifications Statement Checklist	(non-scored)
Section 7	Exhibits EXHIBIT A – AFFIDAVIT EXHIBIT B – SWORN STATEMENT – PUBLIC ENTITY CRIME/JESSICA LUNDSFORD ACT EXHIBIT C – CONFLICT OF INTEREST DISCLOSURE FORM EXHIBIT D – PROHIBITION AGAINST CONTINGENCY FEES EXHIBIT E – DEBARMENT Q & A AND DEBARMENT FORM EXHIBIT F – AFFIDAVIT FOR CLAIMING LOCAL PURCHASING PREFERENCE EXHIBIT G – DRAFT COPY – “AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK” EXHIBIT H – DRAFT COPY – LEON COUNTY SCHOOL GENERAL CONDITIONS	(non-scored)
Section 8	Executive Summary	(non-scored)
Total		100 points

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Part VII – Shortlist Interview & Presentation Guidelines

RFQ 341 – 2015 Construction Manager at Risk for Ruediger ES New Construction, Remodeling and Renovations & Site Improvements Project

A minimum of three (3) firms with the highest scores will be more closely considered through a presentation of their approach to perform this particular project. Time will be allowed for questions and answers after the presentation. It is expected that the person(s) who will be assigned to the project, and any other persons deemed necessary by the firm, will attend. The selected firms will be expected to address the following as established by Florida Statute 287.055(4)(b) and will be scored by the committee with a maximum point total of one hundred (100 points) for the presentation and interview:

- | | | |
|--------------|--|---------------------|
| 1. | <u>Ability of Professional Personnel</u> | (30 points) |
| | The interested firm shall name the actual staff to be assigned to this project, describe their ability and experience and portray the function of each within their organization and their proposed role on this project. The staff should be present at the interview. | |
| 2. | <u>Certified Minority /Small Business Participation</u> | (5 points) |
| | Show how minority and/or small business participation goals were achieved on previous projects and how they will be achieved on this project. | |
| 3. | <u>Past Performance in Implementing Cost Control/Value Engineering</u> | (25 points) |
| | The firm should demonstrate their past knowledge and experience, and how that experience may be applied to this project using strategic cost controls and value engineering practices. | |
| 4. | <u>Willingness to Meet Time & Budget Requirements</u> | (15 points) |
| | The interested firm shall demonstrate verbally and/or graphically their plan for constructing the Ruediger Elementary School New Construction, Remodeling and Renovations & Site Improvements Project documenting the services to be provided and showing the inter-relationship of all parties. | |
| 5. | <u>Location</u> Office location to the site. | (5 points) |
| 6. | <u>Recent, Current and Projected Workloads of Firm</u> | (15 points) |
| 7. | <u>Volume of Work Previously Awarded by LCSB</u>
<u>(Equitable distribution of contracts)</u> | (5 points) |
| TOTAL | | (100 points) |

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Part VIII - Exhibits

**RFQ 341-2015 Construction Manager at Risk Ruediger ES New Construction, Remodeling and Renovations
& Site Improvements Project**

The following pages include the applicable exhibits for the Qualification Statement.

- EXHIBIT A – AFFIDAVIT
- EXHIBIT B – SWORN STATEMENT – PUBLIC ENTITY CRIME/JESSICA LUNDSFORD ACT
- EXHIBIT C – CONFLICT OF INTEREST DISCLOSURE FORM
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Part VIII- Exhibits

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AGENDA ITEM FORM

DATE: x/xx/2014

BOARD MEETING DATE xx/xx/2014

CATEGORY: Items for Consent: Contracts: Other

SUBJECT: _____, Selection Committee Recommendation, Ruediger Elementary School, New Construction, Remodeling and Renovations & Site Improvements Project

ACCESS: Public

TYPE: Action (Consent)

FISCAL IMPACT: No

DOLLAR AMOUNT: N/A

BUDGETED: No

BUDGET SOURCE: **APPROVAL TREE:** Construction

STAFF MEMBER REPORTING THIS ITEM/PHONE: Danny Allbritton, 617-5907

ACTION REQUESTED: The Superintendent recommends Board action to approve negotiation with _____ the highest ranked firm for the Construction Manager at Risk Services for Ruediger Elementary School, New Construction, Remodeling and Renovations & Site Improvements project, in accordance with F.S. Chapter 287.055, "Consultant's Competitive Negotiations Act." Should this negotiation fail with _____, then request permission to negotiate with the next ranked firm. Once negotiations have been finalized, the contract will be submitted to the Board for approval.

ITEM SUMMARY: The selection committee for the Construction Manager at Risk Services for convened on October 8, 2014 to interview construction management firms for Ruediger Elementary School, New Construction, Remodeling and Renovations & Site Improvements project. Nine (9) firms submitted qualification statements for this project, of which four (4) were selected to interview. The committee ranked the firms as follows:

WILL SUBMITTER BE DELIVERING SIGNATURE DOCUMENTS TO THE BOARD SECRETARY? No

AFFIDAVIT
DIVISION OF FACILITIES & CONSTRUCTION
LEON COUNTY SCHOOLS

STATE OF _____

COUNTY OF _____

I hereby declare and affirm that I am the _____
(Title)
of _____,
(Company)

that I am duly authorized to execute the foregoing Contractor Prequalification Certification Application, and that the contents of said document(s) are complete, true, and correct to the best of my knowledge and belief. I hereby certify that the application and supporting documents include all of the material information necessary to validate the status of the company for prequalification purposes. Further, the undersigned is notified of his/her responsibility to notify the Board within fifteen (15) days and provide a notarized statement whenever a change occurs in the ownership, management, or financial condition of the company. Any prequalification applicant, including its principal(s), director(s), and any affiliate, who is a party to any misrepresentation to obtain business or contracts with the District, pursuant to Florida State statutes, State administrative rules, and School Board rule shall be declared delinquent and have its certificate suspended or revoked and will be subject to debarment and any other penalties prescribed by law.

(Corporate Seal), if appropriate

Name of Owner or Officer (Printed)

Owner or Officer (Signature)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, as _____ of
(name) (title)

(firm)

(Affix Notary Stamp or Seal)

Notary Public, State of Florida

Print Name: _____
Commission Number: _____
My Commission Expires: _____

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**SWORN STATEMENT – NEW CONTRACTS SWORN
STATEMENT PURSUANT TO SECTION 1012.465, FLORIDA
STATUTES AS AMENDED BY
HB 1877, THE JESSICA LUNSFORD ACT**

***THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF
A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.***

1. This sworn statement is submitted to The School Board of Leon County, Florida (*hereinafter "Board" or "School Board"*) by _____
(Print individual's name and title)
for _____
(Print name of entity submitting sworn statement)
whose business address _____
is _____
and its Federal Employer Identification Number (FEIN) is _____
If the entity has no FEIN, include the Social Security Number (SSN) of the individual signing this sworn statement and so indicate.
2. I, _____ am duly authorized to make this sworn statement
(Print individual's name and title)
on behalf of: _____

(Print name of entity submitting sworn statement)
3. I understand that during the 2005 Legislative Session, House Bill 1877, The Jessica Lunsford Act (*hereinafter "The Act" or "Act"*) was passed and approved by Governor Bush on May 2, 2005, with an effective date of September 1, 2005.
4. I understand that the Act amends the background screening requirements of section 1012.465, Florida Statutes (2004) for all non-instructional school district employees or **"contractual personnel"** by requiring all non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present to undergo and pass "level 2 background screening," and further I understand the Act defines **"contractual personnel"** to include any vendor, individual, or entity under contract with the Board.
5. I understand that pursuant to section 1012.465, Florida Statutes as amended by the Act, non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in sections 1012.32 and 435.04, Florida Statutes.
6. I understand that as _____ (*eg. a charter bus company*)
(Type of entity)
all contractual personnel, as defined in section 1012.465, Florida Statutes, must meet Level 2 screening requirements as outlined in sections 1012.32 and 435.04, Florida Statutes in order to do business with the

School Board.

7. I understand that "level 2 screening requirements" as defined in sections 1012.32 and 435.04, Florida Statutes means that fingerprints of all contractual personnel must be obtained and submitted to the Florida Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing.
8. I understand that the School Board has implemented Board Policy 2.021 to comply with level 2 screening requirements, as defined in sections 1012.32 and 435.04, Florida Statutes. I understand that my company must comply with these local procedures as they are developed or amended from time to time.
9. I understand that any costs and fees associated with the required background screening will be borne by my company.
10. I understand that any personnel of the contractor found through fingerprint processing and subsequent level 2 background screening to have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense outlined in Section 435.04, Florida Statutes (or any similar statute of another jurisdiction), shall not be permitted to come onto school grounds or any leased premises where school-sponsored activities are taking place when students are present, shall not be permitted direct contact with students, and shall not be permitted to have access to school district funds.
11. I understand that the failure of any of the company's or my affected personnel to meet level 2 screening standards as required by section 1012.465, Florida Statutes, may disqualify my company from doing business with the School Board.
12. I hereby certify that the foregoing statement is true and correct in relation to the company for which I am submitting this sworn statement. I further certify that this statement is being given knowingly and voluntarily by me on behalf of my company.

The company submitting this sworn statement agrees to be bound by the provisions of SECTIONS 1012.32, 1012.465, AND 435.04 OF THE FLORIDA STATUTES AS AMENDED BY HB 1877, THE JESSICA LUNS福德 ACT 2005.

I CERTIFY THAT THE SUBMISSION OF THIS FORM TO THE SCHOOL BOARD OF LEON COUNTY, FLORIDA ON BEHALF OF THE COMPANY IDENTIFIED IN PARAGRAPH ONE (1) ABOVE BINDS THE COMPANY TO FULLY COMPLY WITH THE BACKGROUND SCREENING REQUIREMENTS OF SECTIONS 1012.32, AND 435.04, FLORIDA STATUTES.

(Signature)

Sworn to and subscribed before me this _____ day of _____ 20____

_____ is personally known to me ☐ OR produced identification ☐

by showing _____
(Type of Identification)

Notary Public – State of _____ My commission expires on: _____

Signature of Notary Public

(Printed, typed or stamped commissioned name of Notary Public)

CONFLICT OF INTEREST DISCLOSURE FORM

1. I HEREBY CERTIFY that _____ am the
(Print Name)
_____ and the duly authorized representative of the Firm
(Title)

whose address is _____, and that I possess the legal authority to make this affidavit on behalf of myself and the Firm for which I am acting; and,

2. Except as listed below, no employee, officer, or agent of the Firm have any conflicts of interest, real or apparent, due to ownership, other clients, contracts, or interests associated with this project;
3. This proposal is made without understanding, agreement, or connection with any corporation, Firm, or person submitting a proposal for the same services, and is in all respects fair and without collusion or fraud.

EXCEPTIONS (List)

Signature: _____

Printed Name: _____

Firm Name: _____

Date: _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 20 __, by

_____ who is personally known to me or who has

produced _____ as identification.

NOTARY PUBLIC – STATE OF _____

(seal)

Type or print Name: _____

Commission No: _____

Commission Expires: _____

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PROHIBITION AGAINST CONTINGENT FEES

In accordance with Florida Statute 287.055(6)(a), the following statement duly signed and notarized, must be included in each proposal:

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

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of 20____ by _____
_____, who is personally known to me or who has produced
_____ as identification.

(seal)

NOTARY PUBLIC-STATE OF _____

Type or Print name: _____

Commission No: _____

Commission Expires _____

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FREQUENTLY ASKED QUESTIONS ABOUT DEBARMENT

What is "Debarment, Suspension, Ineligibility, and Voluntary Exclusion"?

These terms refer to the status of a person that cannot contract with or receive grants from a federal agency.

In order to be debarred, suspended, ineligible, or voluntarily excluded, you must:

- Have had a contract or grant with a federal agency, and
- Have gone through some process where the federal agency notified or attempted to notify you that you could not contract with the federal agency
- Generally, this process occurs where you, the contractor, are not qualified or are not adequately performing under a contract, or have violated a regulation or law pertaining to the contract.

Why am I required to sign this certification?

You are requesting a contract with LCSB. Federal law (Executive Order 12549) requires LCSB to ensure that persons or companies that contract with LCSB are not prohibited from having federal contracts.

What is Executive Order 12549?

Executive Order 12549 refers to Federal Executive Order Number 12549. The executive order was signed by the President of the United States and directed federal agencies to ensure that federal agencies, and any state or other agency receiving federal funds were not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants.

What does the word "proposal" mean when referred to in this certification?

Proposal means a solicited or unsolicited bid, application, request, invitation to consider or similar communication from you to LCSB.

What or who is "lower tier participant"?

Lower tier participant means a person or organization that submits a proposal, enters into contracts with, or receives a grant from LCSB, OR any subcontractor of a contract with LCSB. If you hire subcontractors, you should require them to sign a certification and keep it with your subcontract.

What is a covered transaction when referred to in this certification?

Covered Transaction means a contract, oral or written agreement, grant, or any other arrangement where you contract with or received money from LCSB. Covered Transaction does not include mandatory entitlements and individual benefits.

NAME		DOING BUSINESS AS (DBA)	
STREET ADDRESS		CITY, STATE, ZIP CODE	
FEDERAL EMPLOYER ID NUMBER			
This certification is submitted as part of a request to contract. The applicable Procurement or Solicitation Number, if any, is _____			
Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- -Lower Tier Covered Transactions			
READ CAREFULLY BEFORE SIGNING THE CERTIFICATION. Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.			
<ol style="list-style-type: none"> 1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below. 2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. 4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. 5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, I shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- -Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the LIST of Parties Excluded from Federal Procurement and Nonprocurement Programs. 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 			
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- - Lower Tier Covered Transactions			
The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently			
<ol style="list-style-type: none"> 1. debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. 			
Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective			
<ol style="list-style-type: none"> 2. participant shall attach an explanation to this proposal. 			
BIDDER OR CONTRACTOR SIGNATURE			DATE
PRINT NAME AND TITLE			

AFFIDAVIT FOR CLAIMING LOCAL PURCHASING PREFERENCE

Proposer/Bidder/Quoter affirms that it is a local or adjacent county business as defined by Policy #6450 of Leon County Schools and the regulations thereto.

A Leon/adjacent county vendor is a private independent vendor that has been licensed for at least six (6) months preceding the bid or proposal opening, as required by local, State, and Federal law to provide the goods, services, or construction to be purchased. The vendor must have a physical business address, staffed by at least one (1) person, in the geographical boundaries of Leon County or in the adjacent counties of Gadsden, Jefferson, or Wakulla, Florida. The vendor, on a day-to-day basis, should provide to the Board the needed goods and/or services substantially from the local business address. Post Office boxes are not verifiable and shall not be used for the purpose of establishing said physical address.

Please complete the following in support of the self-certification:

Business Name: _____

Address: _____

Phone

Fax

Email

County: _____ Length of time at this location: _____ # of employees at this location _____

Is your business certified as a small business through Leon County Schools? _____

Signature of Authorized Representative

Date

State of FLORIDA

County of _____

Sworn to and subscribed before me, a Notary Public for the above State and County, on this _____ day of _____, 20____.

Notary Public

My Commission Expires

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[Type the document title]

Board Agenda _____

Item No. _____

**AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER AT RISK
LEON COUNTY SCHOOL BOARD PROJECTS**

THIS AGREEMENT made this _ day of __, 20__, between the School Board of Leon County, Florida (here-in-after called the "Owner") and

(The Contractor)

for services in connection with the Projects for the Owner as assigned as follows:

<insert school>

The Architect: <insert Architect>

The Owner and the Construction Manager agree as set forth below:

1

ARTICLE 1

The Construction Team and Entire Agreement

- 1.1 The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project in an expeditious and economical manner consistent with the interests of the Owners.
- 1.2 **The Construction Team:** The Construction Manager, the Owner, and the Architect (the "Construction Team") will work as a team through the completion of pre-construction and construction services. The Construction Manager shall provide leadership to the Construction Team on all matters relating to preconstruction and construction. The Architect will provide leadership to the Construction Team on all matters relating to design.
- 1.3 **Entire Agreement:** This Agreement, all attachments thereto (which are each incorporated by reference), Conditions of the Contract (General and/or Supplemental), Construction Manager's proposal for pre-construction services, Drawings, Specifications, and any duly executed change orders, addenda or amendments related thereto, together represent the entire agreement between the

Owner and the Construction Manager, shall collectively be referred to as Contract Documents and supersede all prior negotiations, representations, or agreements. This agreement may be amended only by written instrument signed by the Owner and the Construction Manager.

- 1.4 **Defined Terms and Conflict:** Throughout this Agreement, capitalized terms will have the meaning set forth in the Conditions of the Contract unless specifically defined herein. Where this Agreement is expressly in conflict with the Conditions of the Contract, this Agreement will prevail. Where this Agreement is silent, the Conditions of the Contract, and the requirements of the Drawings and Specifications will prevail.

2

ARTICLE 2

Preconstruction Phase - Construction Manager's Basic Services

- 2.1 The Construction Manager agrees to furnish the pre-construction services set forth herein and required for completion of the Project on a Guaranteed Maximum Price (hereinafter defined) basis. Construction Manager represents that it is thoroughly familiar with and understands the requirements of the Project scope and that it is experienced in the administration and construction of building projects of similar type and scope. Construction Manager represents to Owner that Construction Manager has all necessary construction education, skill, knowledge, and experience required for the Project and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required hereby. In addition, Construction Manager represents that it has, and all of the subcontractors performing services under this Agreement will have, all applicable licenses required by the State of Florida to perform such services.
- 2.2 The Construction Manager shall cooperate closely with the Owner's Architect, Project Representative, and Building Code Inspector(s). The services required for pre-construction includes, but are not limited to, the following
- 2.2.1 The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall prepare and distribute minutes of all meetings attended. The Construction Manager shall attend as many meetings as requested by the Owner.
- 2.2.2 Provide evaluations of proposed project sites. Provide recommendations as to egress and ingress, municipal development and building code compliance and utility services, aid in negotiations with property owners, if applicable, to insure procurement of a site in an expeditious and economical manner consistent with the best interest of the Owner.

- 2.2.3 Within thirty (30) days of award of this contract, provide preliminary evaluation of the program and Project budget requirements, each in terms of the other. This evaluation by the Construction Manager shall include as a minimum, the following: cost modeling with a narrative addressing whether the Owner's Project budget is sufficient to perform the Project, and possible areas in which the Owner may be able to achieve a savings under the Project budget Assist the Owner and the Architect in achieving mutually agreed upon program and Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.
- 2.2.4 Review design: The Construction Manager shall thoroughly review all design documents for constructability, budget and compliance with applicable laws, rules, codes, Owner design standards, and ordinances. The review shall also include any work items necessary or potential obstacles to, delivering to the Leon County School Board an operational and complete project.
- 2.2.5 Advise both the Owner and Architect about site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurements, installation and construction, and factors related to cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
- 2.2.6 Provide value-engineering recommendations, taking into consideration of any impacts relative to redesign by the Architect, of all specified products and design in order to maximize the Leon County School Board's Capital Outlay Operations resources. Coordinate redesign of accepted value- engineering initiatives by providing consultation and design review to the Architect and Owner.
- 2.2.7 When the Owner determines that it has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- 2.2.8 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall, within twenty (20) days of receipt thereof, prepare for the review of the Architect and approval of the Owner, a detailed estimate with supporting data. The supporting data provided by the Construction Manager shall include, at a minimum; all assumptions and allowances made by the Construction Manager in preparing the estimate such as market conditions or labor issues; any schedule considerations which were made in preparing the estimate such as market conditions or labor issues; any schedule considerations which were made in preparing the estimate; and a list of any potential cost saving items, including all costs associated with each item. During the preparation of the Design Development Documents, the Construction

Manager shall update and refine this estimate at appropriate intervals and when specifically requested to do so by the Owner.

- 2.2.9 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall, within twenty (20) days of receipt thereof, prepare a detailed estimate with supporting data as required in 2.1.5.1 above for review by the Architect and approval by the Owner. During the preparation of the Construction documents, the Construction Manager shall continuously update and refine this estimate as required by the Owner. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect on adjustments to the Project's scope in order to comply with the limitations of the Owner's budget.
- 2.2.10 Perform constructability reviews of the proposed design as a part of each estimate.
- 2.2.11 Assist in developing Construction Documents by consulting with the Owner and the Architect regarding Drawings and Specifications and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.
- 2.2.12 Provide and review with the Owner and Architect, separation of the Project into contracts for various categories of work. If separate contracts are to be awarded by the Owner, review the Drawings and Specifications and make recommendations as required to provide that (1) the work of the separate contractors are coordinated with that of the Trade Contractors, (2) all requirements for the Project have been assigned to the appropriate separate contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.
- 2.2.13 Develop a network Project Construction Schedule, as determined by the Owner, providing all major elements such as phasing of construction and times of commencement and completion required of each Trade Contractor. Provide the Project Construction Schedule for each set of bidding documents. Continually updates cost estimates and make recommendations to keep the Project within the budget.
- 2.2.14 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions reviewed and recommended by the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured directly by

the Construction Manager. The Construction Manager shall propose options to expedite the delivery of long-lead time items.

- 2.2.15 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages in accordance with the Owner's solicitation and procurement policies, designed to minimize adverse effects of labor shortages.
- 2.2.16 Develop Trade Contractor interest in the Project. Advertise the Work to be bid and conduct pre-bid conferences with interested bidders to review the documents and take competitive bids on the Work of the various Trade Contractors; or, if authorized by the Owner in writing, negotiate for the performance of that Work. The Construction Manager shall prequalify subcontractors based on criteria established by the Construction Manager and may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work.
- 2.2.17 Analyze and evaluate the results and scope of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and Architect a bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the desired scope of work. Specifically, review the scope of work in detail with apparent low and best bidders and attempt to achieve additional savings whenever practical. Maintain records of all pre-award interviews with apparent low bidder. The Owner and Architect shall be notified and have the option to attend, all meetings by the Construction Manager related to bid openings, scope evaluation and subcontractor award determinations.
- 2.2.18 (New) All bids shall be publicly opened at the offices of the Construction Manager at Risk or other designated location.
- 2.2.19 (New) Construction Manager at Risk Services shall have a minimum of three (3) sealed bids for each division on all LCS construction projects. Before opening any sealed bids the Construction Manager at Risk will verify that three (3) sealed bids from pre-qualified sub-contractors have been received for each division. If less than three (3) sealed bids are received in any division, those sealed bids will be unopened and returned to for rebidding. The Construction Manager at Risk may only proceed with fewer than three sealed bids for good cause, which shall be justified in writing by the Construction Manager at Risk and approved in writing by the project Architect and the LCS Director of Construction or his or her designee.
- 2.2.20 Prepare and submit to the Owner, a Guaranteed Maximum Price proposal, set forth in Article 8 of this Agreement, based upon Drawings and Specifications produced by the Architect, or other information as applicable, for the Owner's

review broken down by Trade Contract or Division, for phase of work, including alternates necessary to assure meeting the budget.

3

ARTICLE 3

Preconstruction Phase - Payments to Construction Manager

- 3.1 In consideration of the performance of the Agreement, the Owner agrees to pay the Construction Manager as compensation for its services as set forth below:
- 3.1.1 Pre-construction Services §
- 3.2 Upon receipt of the Notice to Proceed, the Construction Manager shall commence providing the indemnification described in Paragraph 3.18 of the General Conditions of the Contract. The Construction Manager acknowledges that ten dollars (\$10.00) has been included in the fee proposal for pre-construction services for the purposes of providing Indemnification, and is a part of the fee established for the first phase of Preconstruction Services. If for any reason the project does not move forward through no fault of the Construction Manager, the Owner shall provide payment to the Construction Manager for all services rendered and completed.
- 3.3 Payment of Construction Manager's fee will be in the following manner: The Pre-Construction fees will be paid upon Architect or Engineer's acceptance and LCS Board Approval of the Guaranteed Maximum Price (GMP).
- 3.4 The Pre-construction Phase shall be completed as scheduled otherwise by the Owner. Monthly progress payments shall be paid on the percentage earned and certified by the A/E during this period for services completed. The final payment shall be due and payable with the acceptance or rejection of GMP for the Construction Phase. Retainage will not be withheld from pre-construction services payments.

4

ARTICLE 4

Construction Phase - Construction Manager's Basic Services

- 4.1 The scope of required services under this Agreement will include full Construction Management at Risk services hereinafter referred to as the "Project". The Construction Manager shall cooperate closely with the Owner's Architect, Project Representative, and Building Code Inspector(s) and shall be responsible for the successful completion of the Project.
- 4.2 The services required for the construction program includes, but is not limited to, the following: **<INSERT SCOPE OF WORK>**
- 4.3 **Construction Phase:** Unless otherwise authorized by the Owner, all permanent construction for the Project shall be performed under Trade Contracts held by the Construction Manager, except as provided in Article 3 paragraph 3.4.1, Labor and Materials of the ***LCSB General Conditions***. The Construction Manager shall not bid on any of the Trade Contractor Work or perform such work with its own

forces without the prior written consent of the Owner's Representatives. The Construction Manager shall:

- 4.3.1 Administer the construction phase as provided herein and in the Conditions of the Contract, which include the following: the **LCSB General Conditions** and the Contract for Construction, as revised by the Owner and Architect. Terms used in the Conditions of the Contract shall have the following meaning:
 - 4.3.1.1 "Contractor" means Construction Manager, and the terms will be used interchangeably.
 - 4.3.1.2 "Subcontractor" means Trade Contractor, and the terms will be used interchangeably.
 - 4.3.1.3 "Contract Sum" means Guaranteed Maximum Price, and the terms will be used interchangeably.
 - 4.3.1.4 "Construction Management Fee" refer to Article 8.
 - 4.3.1.5 "Cost of Work" refer to Exhibit B.
- 4.3.2 Commence the work within 10 days after receipt of Notice-to-Proceed from the Owner.
- 4.3.3 Manage, schedule and coordinate the work, including the work of the Trade Contractors, and coordinate the work with the activities and responsibilities of the Owner, Architect and Construction Manager in order to complete the Project in accordance with the Owner's objectives of cost, time and quality. Develop and maintain a program acceptable to the Owner and Architect, to assure quality control of the construction. Supervise the work of all subcontractors providing instructions to each when its work does not conform to the requirements of the Plans and Specifications and continue to manage each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and the Architect over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.
- 4.3.4 Maintain exclusively for this Project a competent staff as outlined in ATTACHMENT "A" to coordinate and direct the work and progress of the Trade Contractors on the Project. All the of Construction Manager's on-site management and supervisory personnel shall be consistent with the interview presentation and shall not be removed or replaced without the Owner's consent which shall not be unreasonably withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event the Construction Manager shall promptly replace such personnel, without consideration of additional compensation for the replacement.

- 4.3.5 Provide contract administration and recommend approval of payments; monitor and record the construction progress; review and approve as-builts and maintenance and warranty manuals from all sub-contractors; provide limited construction services; and keep a daily log of all site visits and observations.
- 4.3.6 Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team. Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate change orders and contract modifications on behalf of the Construction Manager. Make available such executive personnel as necessary to execute change orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Project.
- 4.3.7 Establish procedures for coordination between the Owner, Architect, Trade Contractors and Construction Manager with respect to all aspects of the work.
- 4.3.8 Develop and implement procedures to monitor, record, review, and approve all submittals, shop drawings, change orders, pay requests, and field orders for budget and schedule impact, and compliance with the contract documents.
- 4.3.9 Require of the various Trade Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Trade Contractors.
- 4.3.10 In coordination with the Architect, establish and implement procedures for tracking and expediting and processing of shop drawings and samples, as required by the Conditions of the Contract.
- 4.3.11 Schedule and conduct weekly progress meetings with Trade Contractors to review such matters as job procedures, construction progress schedule, shop drawing status and other information as necessary. Provide prior notice to Owner and Architect of all such meetings, so that they may attend at their option. Prepare and distribute minutes. Schedule monthly meetings with the Architect, the Owner, and critical Trade Contractors.
- 4.3.12 Review the schedule with the various Trade Contractors and review, or expand, the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Regularly monitor and update the Project Schedule and various sub-networkers as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of each monitoring as part of the monthly project report. Display the current Project schedule in the on-site office; review at progress meetings.
- 4.3.13 Determine the adequacy of the Trade Contractor's personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner, Architect, take necessary corrective actions when

requirements of a Trade Contract or a Trade Contract Schedule are not provided.

- 4.3.14 Provide purchasing packages of major components and equipment for the Owner to purchase directly. Purchase **Owner Furnished Contractor Installed** (herein called "**OFCI**") equipment directly and avoid sales tax. Such purchases shall be deducted dollar for dollar from the GMP.
- 4.3.15 When OFCI materials and equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their acceptance, proper storage, and incorporation into the Work provided in the scope of the OFCI Work is included within the GMP. Installer of OFCI equipment shall be certified by the Manufacturer to insure that Manufacturer's Warranty is not compromised.
- 4.3.16 Develop and maintain an effective system of Project cost control and accounting, which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise the Owner and Architect whenever projected costs exceed budgets or estimates. Cost control reports shall be included as part of the monthly report.
- 4.3.17 The Construction Manager shall maintain a system of accounting consistent with generally accepted accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work. The Owner shall have access to all such accounting records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work. All accounting records maintained by the Construction Manager for the Project shall be considered public record pursuant to Chapter 119, Florida Statutes.
- 4.3.18 Develop and implement a system for the preparation, review and processing of change orders. Without assuming any of the Architect's responsibilities for design, recommend necessary or desirable changes to the Owner and the Architect, review requests for changes and submit recommendations to the Owner and Architect.
- 4.3.19 When requested by the Owner or Architect, promptly prepare and submit estimates of probable cost for changes proposed in the Work, including similar estimates from the Proposals from Trade Contractors.
- 4.3.20 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors. The OSHA guidelines shall serve as the basis for the construction safety program. The safety of students, faculty, administration, employees and the public shall be the Construction Manger's primary objective.

- 4.3.21 Promptly notify the Owner in writing, upon receiving notice of filing of any change or non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.
- 4.3.22 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request.
- 4.3.23 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents etc. as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction, remodeling and renovations subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.
- 4.3.24 Record the progress of the Project. Submit written monthly progress reports to the Owner and the Architect including information on the Trade Contractor's Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method (CPM), if applicable, scheduling and project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Include the current level of SBE participation that complies with LCSB's Small Business Development Program, Board Policy 6325. Keep a daily log available to the Owner and the Architect. Report and record such additional information related to construction as may be requested by the Owner.
- 4.3.25 Schedule and coordinate all inspections and tests required by the specifications and by the District's Facilities and Building Code Compliance Offices.
- 4.3.26 Ensure and document correction of nonconforming and substandard work, in conjunction with Owner's representative.
- 4.3.27 Schedule and coordinate Test and Balance, substantial completion, building commissioning, and occupancy inspections.
- 4.3.28 Compile and deliver instructions for operating all building systems, including training of maintenance staff for the Owner.
- 4.3.29 Prepare final project accounting.
- 4.3.30 Provide a minimum One-Year Warranty on all parts and labor from date of Substantial Completion, along with all other warranties as specified.
- 4.3.31 Ensure timely completion of warranty work during the warranty period.
- 4.3.32 Schedule warranty inspections and ensure timely completion of required work generated by the inspections.

- 4.3.33 Assist in the transfer of the project to the Leon County School Board's Construction Department/Maintenance Department including the delivery of as-builts, warranties, guaranties, and operating instructions.
- 4.3.34 *Ninety (90) calendar days* prior to expiration of the Warranty period, *schedule to* conduct a walk-through with the Owner and Architect to insure that all warranty, incomplete, or unsatisfactory work has been corrected.

5

ARTICLE 5

Construction Phase - Additional Services

- 5.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager shall provide additional services, which are beyond the scope of the Construction Phase - Basic Services described in Article 4, herein. The Construction Manager shall be compensated for such additional services, including a fee to be negotiated by the Owner and the Construction Manager at the time of the additional services request.

6

ARTICLE 6

Owner's Responsibilities

- 6.1 The Owner shall designate a representative to act in its behalf. This representative, or his/her designee will monitor the progress of the Work, serve as a liaison with the Construction Manager and the Architect, receive and process communications and paperwork, and to represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.
- 6.2 The Owner shall retain the services of a threshold inspector, if required by Chapter 553.79(5)(a)(b), (7)(a),(8), Florida Statutes.

7

ARTICLE 7

Schedule

- 7.1 All Work covered under this Agreement shall be Substantially Complete on or >INSERT DATE <, following the Notice-to-Proceed issued by the Owner. Final Completion, as applicable, to be completed with 30 consecutive calendar days following Substantial Completion.
- 7.2 In the event the Owner desires to accelerate the schedule for any portion of the Work to an earlier date, the Owner shall notify the Construction Manager in writing. Within seven (7) days, the Construction Manager shall give the Owner a revised Guaranteed Maximum Price for the accelerated Work, which shall become a Change Order upon acceptance. The Owner may then direct the Construction Manager to increase its staff and require its Trade Contractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required advancement in accordance with the approved Change Order. In such event, the Owner shall reimburse the Construction Manager for the costs of such acceleration subject to the Guaranteed Maximum Price. In no

event shall the Construction Manager be entitled to compensation in excess of the adjusted Guaranteed Maximum Price. The Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure the Owner's approval of such records.

- 7.3 The Owner shall have the right to occupy, or use, any portion of the Work at any time during the construction duration of the Project. If such use or occupancy affects the Cost of the Project, or the schedule for the Work, the use or occupancy will be treated as a Change to the Work in accordance with Part B, Article 9, herein.

8

ARTICLE 8

Guaranteed Maximum Price

- 8.1 The Guaranteed Maximum Price shall consist of those applicable costs and fees set forth in 8.5 below, which shall include the cost of the work required by the Construction Documents, and the Construction Manager's fee. The total Guaranteed Maximum Price is set forth in Article 9, herein. The GMP shall show these items separately, and all changes to the GMP made under the authority of other provisions of this Agreement shall also show these items separately. The GMP shall be established based on construction documents prepared by the Architect. The GMP is subject to modification for changes in the Work as provided in Article 11, herein.
- 8.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.
- 8.3 If the Cost of the Work is such that the GMP is exceeded, the Construction Manager shall incur all such costs and there shall be no additional cost to, or reimbursement by, the Owner.
- 8.4 By execution of this Agreement, the Construction Manager certifies that all factual unit costs (supporting the fees specified in this Agreement) are accurate, complete, and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future, to support any additional fees that may be authorized, will also be accurate and complete. The fees specified in this Agreement, and any additional fees that may be authorized in the future, shall be adjusted to exclude any significant sums which the Owner determines the fee was increased due to inaccurate, or non-current factual unit cost.
- 8.5 The Guaranteed Maximum Price (GMP) Proposal shall consist of the Cost of Work in the following:
- 8.5.1 Direct costs for performing construction, the actual cost of all subcontracts, materials and supply contracts, general conditions, fee, and any agreed to Owner's Project contingency.

- 8.5.2 Construction Manager's Fee: The following shall be deemed included in the Construction Manager's fee for services during the Construction Phase.
- 8.5.2.1 Salaries or other compensation of the Construction Manager's employees at the principal office and branch office for services related to the project.
 - 8.5.2.2 Bonuses and awards to all Construction Manager's employees.
 - 8.5.2.3 Only those general operating expenses of the Construction Manager's principal and/or branch offices that are specifically related to this Project.
 - 8.5.2.4 The costs of all data processing staff and software at the Construction Manager's principal or branch office performing services related to this project.
 - 8.5.2.5 The acquisition, operation and maintenance of office supplies, tools, vehicles and equipment in which title and ownership is not vested with the Owner.
 - 8.5.2.6 The Construction Manager's profit.
 - 8.5.2.7 Conditions Expenses: The following General Conditions expenses, which shall be clearly identified as individual line items in the GMP proposal, are reimbursable subject to the Owner's approval prior to any incurred expenditure:
 - 8.5.2.8 Salaries and compensation of personnel working at the Project site. Any statutory limitation on payroll taxes shall not be exceeded. Any fringe rate changed shall be the lesser of actual cost or % of the employee's actual base hourly rate.
 - 8.5.2.9 The cost of periodic site visits for supervisory, inspection, oversight, or management of Project by specific home or branch office personnel as agreed upon by the Owner and identified in the GMP proposal.
 - 8.5.2.10 Expenses for transportation, meals, and lodging of principals and employees, when traveling in connection with services and duties specifically related to this Project and when approved by the Owner. Rates for transportation, meals and lodging shall be consistent with rates as established under the Owner's [Board] policies on the effective date of this Agreement.
 - 8.5.2.11 Expenses incurred for relocation and temporary living allowances of personnel working full time at the project site *when* deemed necessary and approved by the Owner *in writing*.
 - 8.5.2.12 Set up, take down, operating and maintenance expenses of the Construction Manager's Project site office and on site storage facilities.
 - 8.5.2.13 Costs including transportation and maintenance of all materials, supplies, equipment, temporary facilities and tools not owned by the workmen, which are employed or consumed in the performance of the work, the cost on such items

used but not consumed which shall be turned over to the Owner at the end of the project.

8.5.2.14 Computer software licenses for computer equipment at the Project site.

8.5.2.15 Rental charges on all necessary machinery, furniture and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of subcontractor in the performance of the Work, at rental charges consistent with those prevailing in the area.

8.5.2.16 Cost of the premiums for all insurance and cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the construction project.

8.5.2.17 Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.

The cost of secure off-site storage space approved in advance by the Owner.

- 8.5.2.18 Costs for such temporary facilities and equipment at the Project site during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, internet service, and radios.
- 8.5.2.19 Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
- 8.5.2.20 Costs of document reproduction and minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, delivery, postage, and similar petty cash expenses of the site office in connection with the Project.
- 8.5.2.21 Costs for trash and debris control and removal from the site.
- 8.5.2.22 Cost incurred due to an emergency affecting the safety of persons and property.
- 8.5.2.23 Project legal costs reasonable and properly incurred resulting from prosecution of the Project for the Owner, subject to the Owner specifically approving any such costs in writing prior to their being incurred and, the costs were not incurred as a result of the Construction Manager's, subcontractors or vendors negligence or default. This does not provide for payment of legal costs incurred in preparing or asserting claims or requests, by the Construction Manager itself, for change orders or in enforcing the obligations of this Agreement. Refer to LCS General Conditions, Article 3, Paragraph 3.18.1 and 3.18.2 language.
- 8.5.2.24 Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project.
- 8.5.2.25 Costs for watchman and security services for the project.
- 8.5.2.26 Costs of fencing, barricades or partitions to safely separate the Work from public locations.
- 8.5.2.27 Costs for any jobsite items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Work.
- 8.5.2.28 Building, utilization and operating permit fees, inspection and filing fees, sewer and water connection fees.
- 8.5.2.29 Cost of surveys, measurements, layout and as-built work reasonably required for the execution of the Project or by the Construction Documents.
- 8.5.2.30 Other expenses or charges properly incurred and paid in the prosecution of the Project with the prior written approval by the Owner.

8.5.2.31 **Cost of Bond:** In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms approved by the Owner, a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond each in an amount not less than the GMP, less the General Conditions Fee and the Pre-construction Phase Fee. The Construction Manager shall ensure that the surety is rated as A or better by Best's key guide, latest edition and that the surety meets all other requirements set forth in the General Conditions and section 255.05. On all subcontracts where the bid exceeds Three Hundred Thousand (\$300,000.00) Dollars, the Construction Manager may request for the Owner's consideration and approval, that the subcontractor provide a one hundred percent (100%) performance bond and a one hundred percent (100%) labor and material payment bond or other acceptable security from a surety company authorized to do business in the State of Florida by the Department of Insurance.

8.5.2.32 **Contingency:** The estimated Cost of the Project shall include a contingency, an amount mutually agreeable between the Construction Manager and Owner, to cover costs approved by the Owner arising from minor design omissions, unforeseen conditions, and other costs which are properly reimbursable as costs to complete the original scope of Work, but not the basis for adjusting the Guaranteed Maximum Price by Change Order. The project contingency shall only be adjusted by means of issuing a written Constructive Change Directive, approved by the Owner, and it shall be clearly noted on the document that costs are allocated against the project contingency. When costs arise on the Project which the Construction Manager believes should be paid for from the Project contingency established in the GMP proposal, the Construction Manager shall promptly advise the Owner in writing of such costs consistent with the requirements of the Construction Documents. If the Owner concurs that such costs are properly payable from the Project contingency funds, then the Project contingency shall be reduced in the amount of such costs. The Construction Manager shall not be entitled to an additional fee or mark-up for any costs funded by the Project contingency. The contingency shall not be used to fund the cost to correct, replace or repair defective or noncompliant work or materials.

8.5.3 **Buy-Out Savings:** It is expected that some cost savings between the construction manager's GMP Proposal and the actual cost of the Work may be generated as a result of the final bidding negotiation of subcontracts and actual expenses incurred by the Construction Manager. Any cost savings which are realized as a result of this buy out process and actual Project expenditures shall be retained for the Owner's benefit. The Construction Manager shall provide detailed, complete and consistent accounting of these savings throughout the Project duration, in such form as is satisfactory to the Owner. Any cost savings that are generated as a result of the final bidding or negotiation of the subcontracts, and actual expenses by the Construction Manager, which are less than those estimated in establishing the GMP shall be returned in full to the Owner by deductive change order to the GMP Proposal contract amount. The Construction Manager's fee or general conditions costs shall not be adjusted as a result of these savings.

- 8.5.4 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager in writing. Within fourteen (14) calendar days of such notification, the Owner, Professional and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Project and/or to the GMP.
- 8.5.5 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.

9

ARTICLE 9

Payments to Construction Manager

- 9.1 In consideration of the performance of the Agreement, the Owner agrees to pay the Construction Manager as compensation for its services as set forth below:
- 9.1.1 Construction Services \$
- 9.1.2 Total Guaranteed Maximum Price \$
- 9.2 Upon receipt of the Notice-to-Proceed, the Construction Manager shall begin providing the indemnification described in Paragraph 3.18 of the Owner's General Conditions of the Construction Contract. The Construction Manager acknowledges that ten dollars (\$10.00) has been included in the fee proposal for construction services for the purpose of providing indemnifications.
- 9.3 Progress payments shall be paid monthly to the Construction Manager. The pay application shall be submitted in a form acceptable to the Owner, on or about the first (1st) day of each calendar month and shall be paid by the Owner within thirty calendar days of submittal. The application for payment shall be reviewed and certified by the Architect. Monthly pay request shall include the cost of the work completed and the Construction Manager's fee.
- 9.4 As required by Section 287.0585, Florida Statutes, within fourteen (14) working days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the Construction Manager on account of such Trade Contractor's Work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's Work. The Construction Manager shall, by appropriate agreement with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner.
- 9.5 The following certification shall be included with the Construction Manager's final pay request. "I certify that all direct purchases by the Leon County School Board for this project have been closed out or settled prior to the request for

purchase order cancellations. All required materials have been received and no further activity will be required on this/these purchase order(s)".

- 9.6 The Construction Manager's fee for costs approved by the Owner that exceed the GMP amount will be the same (%) as in the original GMP proposal.
- 9.7 For delays in the Project caused by the Owner or other events beyond the control of the Construction Manager, the Construction Manager shall be entitled to an additional fee to compensate the Construction Manager for its expenses. Extensions in time due to the weather are not compensable or included. The Construction Manager's fee for such costs will be the same (%) as in the original GMP proposal.
- 9.8 Retainage in the amount *not-to-exceed* 10%, unless at the Owner's discretion, if the project is Bonded at 100%, then the Owner may reduce retainage to 5% which shall be withheld until the Work is complete. Upon Board approval of request for release of retainage at Final Payment, and upon receipt of all close-out documents, as applicable, the final payment will be processed. (255.078, F.S. and 715.12, F.S.)

10

ARTICLE 10

Cost of the Project

- 10.1 The term "Cost of the Project" shall mean the GMP amount. Prepare and submit to the Owner, a Guaranteed Maximum Price proposal, set forth in Article 8 of this Agreement, based upon Drawings and Specifications produced by the Architect, or other information as applicable, for the Owner's review broken down by Trade Contract or Division, for phase of work, including alternates necessary to assure meeting the budget.
- 10.2 **Owner's Project Contingency:** The GMP will include an agreed upon sum as the **Owner's project** contingency as outlined in Article 8, Paragraph 8.9, which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Contractor will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the **Owner's project** Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System (PMIS) report. The Architect shall verify the actual costs. If bids are received below the anticipated line items in the GMP, the surplus will be added to the contingency. Expenditures charged to the contingency shall have signed authorization by the Owner's representative prior to the expenditure being made.
- 10.3 If bids are received that exceed the applicable line item in the GMP Proposal, the deficiency will be taken from the contingency upon the Owner's approval in writing; however, such events shall not be cause to increase the GMP.

- 10.4 If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP, the Contractor reserves the right to perform that portion of the Work or negotiate for its performance for the specified item lump sum amount or less.
- 10.5 No funds shall be expended from the contingency fund without the written consent of the Owner's Representative. Such authorization shall not be unreasonably withheld.

11 **ARTICLE 11**
Changes in the Work

- 11.1 The Owner, without invalidating this Agreement, may order changes in the Project Work within the general scope of this Agreement consisting of additions, deletions, or other revisions. All changes in the Project shall be authorized as described in the Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

12 **ARTICLE 12**
Discounts

- 12.1 All quantity discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner. All prompt payment discounts of the Owner Furnished Contractor Installed (OFCI) material/equipment shall be accrued to the Owner.

13 **ARTICLE 13**
Insurance

- 13.1 Insurance will be provided as required by the Leon County School Board General Conditions, Article 11, Insurance and Bonds, Paragraphs 11.1.1 through 11.5.1.4 as Conditions of the Contract.

14 **ARTICLE 14**
Miscellaneous Provisions

- 14.1 The Owner and the Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the written consent of the other.
- 14.2 The laws of the State of Florida shall govern this Agreement.
- 14.3 The Construction Manager shall comply with the Owner's Small Business Development Office requirements as applicable with LCSB Small Business

Development Office. www.leonschools.net <District Depts> <Small Business Development> SBDO website: <http://sharepoint.leon.k12.fl.us/sbd/default.aspx>.

- 14.4 The Construction Manager agrees that after completion of all Work under this Agreement, and all Amendments thereto and prior to final payment, it will execute and deliver to the Owner an "Assignment of Anti-trust Claims" as shown in the Special Conditions of the Contract.
- 14.5 The Construction Manager warrants that neither it, nor any proposed subcontractor, has employed or retained any company or person (other than a bona-fide employee working solely for the Construction Manager, or proposed subcontractor) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm (other than a bona-fide employee working solely for the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. This contract may be unilaterally cancelled by the Owner for violation of this provision.
- 14.6 As required by Section 287.058, Florida Statutes, this Agreement may be unilaterally cancelled by the Owner for refusal by the Construction Manager to allow public access to all documents, papers, letter, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the Construction Manager in connection with the Agreement.
- 14.7 If applicable, this project is a federally funded project and wages are to be paid to laborers and mechanics, then such wages shall not be less than the most current prevailing wage rates and fringe benefits listed for the US Dept. of Labor Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area. Such wages and documentation SHALL comply with the Federal, "prevailing wage" rates for Construction Type "Building" in Leon County, Florida, General Decision Number FL120023. Note: At the time of bid, the latest General Decision Number FL 120023, for Leon County, shall be used. The Construction Manager and subcontractors are required to comply with the US Contract Work Hours and Safety Standards Act for Projects in which the construction cost is in excess of \$100,000. The Construction Manager and subcontractors shall pay employees weekly and to submit weekly certified payroll records to the Owner or designated Owner's compliance agency.
- 14.8 Construction Manager 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.

ATTACHMENT "A"

PROPOSAL

AND

PROJECT STAFF

List those of your firm who will be part of the staff for this project.

See attached fee proposal dated ____

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ATTACHMENT "B"

LCSB General Conditions

The word "Contractor" shall be synonymous with Construction Manager at Risk for LCSB projects throughout these documents.

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General Conditions of the Contract for Construction

Leon County School Board

PORTIONS OF THIS DOCUMENT HAVE BEEN BASED UPON THE 1987 EDITION OF DOCUMENT A-201, ORIGINALLY PREPARED BY THE AMERICAN INSTITUTE OF ARCHITECTS AND WHICH IS NO LONGER PUBLISHED. IT HAS BEEN SUBSTANTIALLY MODIFIED FROM THE ORIGINAL AIA FORM.

TABLE OF ARTICLES

- | | |
|---|---|
| 1. GENERAL PROVISIONS | 10. PROTECTION OF PERSONS AND PROPERTY |
| 2. OWNER | 11. INSURANCE AND BONDS |
| 3. CONTRACTOR | 12. UNCOVERING AND CORRECTION OF WORK |
| 4. ADMINISTRATION OF THE CONTRACT | 13. MISCELLANEOUS PROVISIONS |
| 5. SUBCONTRACTORS | 14. TERMINATION OR SUSPENSION OF THE CONTRACT |
| 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS | 15. SMALL BUSINESS DEVELOPMENT |
| 7. CHANGES IN THE WORK | 16. EQUAL OPPORTUNITY |
| 8. TIME | 17. WAIVER OF TRIAL BY JURY |
| 9. PAYMENTS AND COMPLETION | 18. APPRENTICESHIPS |

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

1.1.2 THE CONTRACT

The Contract Documents form the Construction Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or a Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

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

1.1.4 THE PROJECT

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

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, General and Supplemental Conditions of the Contract and Specifications.

1.1.8 PROVIDE

The term 'Provide', as used in the Contract Documents, includes furnishing all labor, supervision, tools, materials, supplies, equipment, shop drawings, product data and samples, together with performance of the Work, or production of an item or system usable in the completed Project.

1.1.9 ADDENDA

Addenda are written or graphic instruments issued prior to award of the Contract which modify or interpret the bid documents, including the Drawings and Specifications, by additions, deletions, clarifications or corrections.

1.1.10 KNOWLEDGE

The terms 'knowledge', 'recognize' and 'discover', their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression 'reasonable inferable' and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

1.1.11 PERSISTENTLY FAILS

The phrase 'persistently fails' and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which cause the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum, or in substantial compliance with the requirements of the Contract Documents.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has examined the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.2.1 Examination of site shall include determination of the nature and scope of the Work and all difficulties that accompany its execution.

- 1.2.2.2 Claims for additional labor, equipment, materials, or costs, resulting from difficulties which should have been noted during the examination of the site, will not be allowed.
- 1.2.2.3 The Contractor shall correlate all dimensions shown on the Drawings for existing work and for new work which is to connect to it. Verify existing dimensions by actual measurement of existing work. Report in writing to the Architect all discrepancies between the requirement of the Contract Documents and Existing conditions.
- 1.2.2.4 The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this paragraph.
- 1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- 1.2.4 Organization of the Specifications into divisions, section and articles, and arrangement of Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the Extent of work to be performed by any trade.
- 1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.3 **OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**
- 1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subContractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subContractor or material or equipment supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subContractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

1.4 CAPITALIZATION

- 1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document.

1.5 INTERPRETATION

- 1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as 'all' and 'any' and articles such as 'the' and 'an,' but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 OWNER

2.1 DEFINITION

- 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term 'Owner' refers to Leon County School Board, 2257 West Pensacola Street, Tallahassee, Florida 32304. The Owner will designate its School Board Project Coordinator and Inspector(s) who will act as its on-site field representatives and fulfill duties enumerated in Section 1013.38, Florida Statutes.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 2.2.1 The Owner acknowledges financial arrangements have been made to fulfill the Owner's obligations under the Contract.
- 2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.
- 2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.2.5 The Owner will furnish the Contractor two (2) copies of Drawings and Project Manuals free of charge. Additional sets will be furnished at the Contractor's request and expense.

2.3 OWNER'S RIGHT TO STOP THE WORK

- 2.3.1 In the opinion of the Owner, if the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner by written order, may direct the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.
- 2.3.2 The Owner's Building Official and Construction Representative serves as the enforcement authority as defined in Chapter 533, Florida Statutes and Chapter 1, Florida Building Code, and shall have the authority to stop work that is not in compliance with the Florida Building Code

and/or construction Contract Documents. The Building Official may take such enforcement action against the Contractor or subcontractor as the Building Official deems necessary per Chapter 533, Florida Statutes and Chapter 1, Florida Building Code.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

- 2.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within **three (3) business days period** after written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such **three (3) business days period**, without further notice and without prejudice to other remedies the owner may have, correct such deficiencies. In such case an appropriate change order shall be issued deducting from payments then or thereafter due the contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. Such action by the Owner and the amount charged to the Contractor are not subject to approval of the Architect. If payments then or thereafter are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.
- 2.4.2 Failure to meet timelines defined in the Critical Path schedule submitted by the Contractor to the Owner shall be evidence of negligence when it appears by examination of the Critical Path Schedule that such failure will result in failure to meet the contracted substantial completion date. Nothing in this paragraph shall prevent the Owner from action against default or neglect for other reasons.
- 2.4.3 In the event that the Contractor's default, neglect, or failure to carry out the Work in accordance with the Contract Documents will jeopardize the health or safety of the present or future occupants of buildings or structures which are part of the Project, and which constitute a violation of any regulation or Code involving health or safety, the Owner's period of required notice to the Contractor shall be reduced from seventy-two (72) hours to twenty-four (24) hours, and all other provisions of paragraph 2.4.1 shall apply.
- 2.4.4 If after the lapse of seventy-two (72) hours (or twenty-four (24) hours if applicable), the Owner begins mobilization and procurement as required to correct the Work, and if after that time the Contractor commences and continues correction of the Work diligently and expeditiously, the Contractor shall reimburse the Owner for all expense of mobilization, procurement, labor, and materials incurred between the time that the written notice expired and the time that the Contractor had clearly and unambiguously commenced corrective work, with adequate work force to meet all applicable time lines.

ARTICLE 3 CONTRACTOR

3.1 DEFINITION

- 3.1.1 The Contractor is the person or entity identified as Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term 'Contractor' means the Contractor or the Contractor's authorized representative.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect, errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and failed

to report it to the Architect. If the Contractor performs any construction activity involving a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other Contractors is not guaranteed by the Architect or the Owner. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor, after which time the Contractor has no claim against the Owner resulting from alleged errors, omissions or inaccuracies of the said survey data.

3.2.2.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly corrected by the Contractor without any additional cost to the Owner.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 Before beginning work at the site, the Contractor shall attend a pre-construction conference scheduled by the Architect and he shall bring the superintendent employed for this project. At this time, all parties concerned will discuss the project under Contract and prepare a program of procedures in keeping with requirements of the Contract Documents. The superintendent shall henceforth make every effort to expeditiously coordinate all phases of the work, including the required reporting procedure, to obtain the end result within the full purpose and intent of the Contract Documents for the project.

3.4 LABOR AND MATERIALS

- 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 3.4.2.1 **Pre-Employment Requirements:** The Contractor shall provide to the Owner or its designee, within forty-eight (48) hours of the time an employee reports to work on the Project site, proof of operator's certification and licensing as required by law for all its workers who operate at any time, on or off the Project site, any motorized vehicle and/or specialized equipment pursuant to this Contract.
- 3.4.2.2 **Conviction of Criminal Offenses:** Contractor employees who are convicted of the below listed criminal offenses will be barred from further access to the Project site; (1) Drugs: Possession, dealing, cultivation, distribution, selling, or using, (2) Violence: Assault, battery, rape, use of a weapon in the commission of a crime, or other similar violent offenses (3) Miscellaneous: Any other crime which, if the Contractor's employee were allowed to continue working, could bring harm to other employees on the Project site. Contractor employees who have been charged with an offense against a minor shall be immediately identified to the Owner and shall be barred from the project site until such time the Owner consents to the employee's presence on the site.
- 3.4.2.2.1 The Contractor shall ensure that all employees, including all subcontractor employees, when working on occupied sites where students are present, have been fingerprinted by the Owner in accordance with Sections 1012.35 and 1012.465, Florida Statutes. Section 1012.32, Florida Statutes requires persons subject to this section found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring contact with students. From the screening results, the Owner shall determine those individuals that have been convicted of such crimes. The costs and fees associated with submitting fingerprints to the Owner shall be at the Contractor's expense. The Contractor shall verify daily and clearly identify through badging or other visible and apparent means, those employees that have been fingerprinted, screened and cleared by the Owner, to be present on the site where students are present. The Contractor shall continually ensure that employees that have not been cleared will not be present on the project site when students are present.
- 3.4.2.3 **Site search and Inspection:** Upon entering and leaving the Project site, each employee, vehicles, lunch boxes, and similar containers or personal items will be subject to search. In addition, all areas of construction will be subject to search at any time for illegal substances, drugs, and alcohol. This may include the use of trained dogs for detection.
- 3.4.2.4 **Anti-terrorism provisions:** The Contractor acknowledges the Owner's heightened awareness concerning domestic and international terrorism and shall fully cooperate with the Owner and public safety agencies in efforts to reduce the risk of terrorism.
- 3.4.3 Not later than fifteen (15) days from the Contract Date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each of the products listed in the Project manual (Division 2 thru 16) and, where applicable, the name of the installing Subcontractor.

3.4.4 The Architect will within seven (7) days, reply in writing to the Contractor stating whether the Owner of the Architect, after due investigation, has reasonable objection to any such proposal. If adequate data of any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner or Architect to reply promptly shall constitute notice of not reasonable objection. Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listing manufacturer must conform to such requirements.

3.4.5 The Contractor shall furnish sufficient forces, construction plans and equipment, and shall work such hours, including night shifts and overtime operation, as may be necessary to insure the execution of the Work in accordance with the approved progress schedule. If the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve the progress by increasing the number of shifts, overtime operations, days of work and the amount of construction plans, all without additional cost to the Owner. Failure of the contractor to comply with the requirements under this provision shall be grounds for determination by the Architect that the Contractor is not executing the Work with such diligence as will insure completion within the time specified and such failure constitutes a substantial violation of the conditions of the Agreement. Upon such determination, the Owner may terminate the Contractor's right to proceed with the Work, or any separable part thereof, in accordance with Article 14 of the General Conditions, or may withhold further payments as indicated in Article 9.5.1

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 The Contractor shall and does hereby guarantee the Work and shall remedy any defects due to faulty materials or workmanship which appear within one (1) year, unless a longer period is specified in the Contract Documents.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.6.2 Although the Owner is not subject to the Florida Sales and Use Tax on purchases, the Contractor in purchasing materials to be used in the construction under this project is not exempt from such taxes.

3.7 PERMITS, FEES AND NOTICES

3.7.1 The Owner shall issue at its expense, the building permit required under current Florida Building Code. The Owner shall obtain and **if required for** site plan approval. The Contractor shall secure and pay for right-of-way utilization permits, and any other permits and

governmental fees, licenses and inspections which are customarily secured after execution of the Contract and necessary for proper execution and completion of the Work.

- 3.7.1.1 Prior to placing any utility into service, the Contractor shall submit application and forward all supporting documentation and test results that are necessary in obtaining such utility clearance. The Contractor shall be responsible for any regulatory fines that may be imposed should a utility be placed into service without the proper clearance. The Contractor shall ensure the clearances are obtained in a timely manner such that the Work is completed per the contract requirements and schedule, and substantial completion dates achieved.
- 3.7.1.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.
- 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.
- 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.
- 3.7.5 All construction shall be in accordance with the editions of codes currently adopted by Leon County Schools.

3.8 ALLOWANCES

- 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contract makes reasonable objection.
- 3.8.2 Unless otherwise provided in the Contract Documents:
 - 3.8.2.1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
 - 3.8.2.2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - 3.8.2.3 contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
 - 3.8.2.4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual cost and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

- 3.9.1 The Contractor shall employ and keep at the site of the work during its progress a competent and thoroughly experienced superintendent capable of handling all phases of the project. The Superintendent shall have any necessary assistants, foremen and timekeepers required by the scope of this project, and shall be acceptable to the Architect **and Owner**, and shall not be

changed or transferred unless approved by the Architect **and Owner**, or ceases to be in the employ of the Contractor. If the Contractor must replace the Superintendent for any reason between "Notice-to-Proceed" and final Architect's certification of completion of the work, then the Contractor shall: Notify Architect **and Owner** that the existing Superintendent will be leaving the job on (date) and that all job work shall cease after said date until a satisfactory replacement Superintendent is found, approved by Architect **and Owner**, and physically present on the site properly authorized and briefed by Contractor.

3.9.2 The Superintendent shall represent the Contractor in the Contractor's absence and all directions given to the Superintendent shall be as binding as if given to the Contractor. Major and important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

3.9.3 The Contractor shall submit to the Architect **and Owner** the name and resume of the proposed superintendent for the Contractor at the pre-construction conference to allow investigation by Architect **and Owner**.

3.9.4 The Contractor shall give efficient supervision to the work, using the best skill and attention. The Contractor shall carefully study and compare all Drawings, Specifications and other instructions and shall report at once to the Architect any error, inconsistency or omission which is discovered but shall not be held responsible for their existence or discovery. The Superintendent shall be in attendance on the job a minimum of six (6) hours per working day from "Notice-to-Proceed" continuously through final approval of the work by the Architect. No work shall be allowed to transpire on the site unless the Superintendent is in attendance at the site.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The contractor shall furnish, not later than fifteen (15) days after receipt of "Notice-to-Proceed", a CPM schedule showing the expected times of completion of the various stages of work on this project. The schedule shall be a C.P.M. (Critical Path Method) chart. The work headings therein shall correspond generally with the headings listed in the Contractor's Schedule of Values. Refer to Division 1 - General Requirements. Final times of completion in the schedule shall not exceed the completion date required by the contract Documents. During progress of the work the Contractor shall enter on the schedule that Actual progress at the end of each month, and shall deliver two (2) copies to the Architect along with the Contractor's pay request. Contractor's pay request will not be processed until receipt and review of monthly updated CPM Chart. The schedule shall be cost loaded and be considered in submitting and approving, all progress payments.

3.10.2 The Contractor shall prepare as provided herein and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. The schedule shall be drawn to a time scale and shall indicate the date of commencement and completion of each work item. At a minimum, the schedule shall indicate individual work items for each applicable section of the Specifications, further subdivided as necessary to indicate sitework and each building in the Project. The items shown shall be directly related to the items listed in the approved Schedule of Values required in Paragraph 9.2. The schedule shall indicate the anticipated percentage of completion for the entire work for each payment period during the construction. The schedule shall indicate adequate time for approval of submittal data, purchase and delivery of materials, equipment testing and acceptance. The schedule shall be accompanied by sufficient backup data to indicate that the proposed schedule is practical. The schedule shall be prepared on one or more sheets 30 by 42 inches.

3.10.3 The Contractor shall conform to the most recent schedules. The schedule shall be revised to reflect modifications by Change Order when such changes affect the overall schedule and

approved changes in the schedule. The schedule shall be displayed in the Contractor's field office and progress shall be posted on this schedule.

3.10.4 The Progress Schedule shall be submitted as follows:

- 3.10.4.1 within fifteen (15) days after Notice to Proceed, the Contractor shall prepare a preliminary progress schedule (in five (5) copies) and meet with the Architect for the purpose of discussion and review.
- 3.10.4.2 within thirty (30) days of the award of the Contract, the Contractor shall have reworked the schedule to reflect the comments of the Architect and the requirements of the Project, and shall submit five (5) copies of the revised schedule. The Architect will not approve for payment any billing or invoice submitted by the Contractor until such time as the 'Progress Schedule' and the 'Schedule of Values' have been properly submitted to the Architect.
- 3.10.4.3 each time a revision to the schedule is authorized the Contractor shall submit five (5) copies of the revised schedule.
- 3.10.4.4 with each application for payments, the Contractor shall submit two (2) copies of the revised progress schedule. These copies shall have all work on or ahead of schedule marked in red. The application for payment will be returned, 'rejected' when not accompanied by the required revised 'Progress Schedule' and 'Schedule of Values'.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

- 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.
 - 3.11.1.1 This record set shall be in addition to the Drawings and Specifications used by the Contractor and its employees for normal reference during construction.
 - 3.11.1.2 The Contractor shall clearly label each document 'Project Record' and in addition to changes (1) Mark drawings to indicate exact location of concealed utilities and appurtenances relative to permanent accessible features of structures, or survey data; (2) Mark each section of the specifications to identify manufacturer, trade name, catalog number and supplier of each product and item of equipment actually installed.
 - 3.11.1.3 The Contractor shall deliver the marked record set of Drawings to the Architect with a letter certifying that the changes made to the drawings are complete, correct and fully checked. The Architect will not approve final payment until this has been accomplished.
 - 3.11.1.4 In addition to the above, the Contractor shall transfer all record changes, addenda and notes on to CAD (latest release) compact disk(s) media and generate a set of each drawing sheet in portable document format (.PDF). Each CAD and PDF sheet shall also be identified as 'PROJECT RECORD'. The files will be labeled such that the sheet number is included in the file label. The PDF files will be generated directly from the CAD files and not scanned from print media. The Contractor shall provide at the Contractor's expense two complete sets of bond prints and specifications made from the CAD project record drawings. The CAD and .PDF file disks and the two sets of prints shall be delivered to the Owner upon completion of the Work.
- 3.11.2 A copy of Toxic Substance and accompanying MSDS Lists submitted by both the Contractor and Subcontractors to the Owner, must be kept at the site during the duration of construction.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Sub Contractor. Sub-subContractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.
- 3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.
 - 3.12.5.1 Shop Drawings and samples shall be dated and contain: name of project; project No.; description or names of equipment, materials and items; and complete identification of locations at which materials or equipment are to be installed. If the shop drawings do not conform completely with the requirements of the Contract Documents, such nonconformance shall be specifically noted on the face of the drawings. Submission of Shop Drawings and samples shall be accompanied by transmittal letter, containing project name, Contractor's name, number of drawings and samples, titles and other pertinent data.
 - 3.12.5.2 Unless otherwise specified, the number of Shop Drawings and the number of samples which the Contractor shall submit and, if necessary, resubmit, is the number that the Contractor requires to be retained for the Contractor's use plus 2 which will be retained by the Architect.
 - 3.12.5.3 All shop drawings for any Architectural, structural, mechanical or electrical work must be submitted to, and reviewed by, the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.
- 3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the Architect. Such Work shall be in accordance with reviewed submittals.
- 3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

- 3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's review of Shop Drawings, Product data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing independently of the submittal package of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.
- 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.
- 3.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.
- 3.13 USE OF SITE**
- 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
- 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.
- 3.13.3 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.
- 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and building adjacent to the site of the Work or (2) the Building in the event of partial occupancy, as more specifically described in Paragraph 9.9.
- 3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, but not limited to, lavatories, toilets, entrances and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulation to be impracticable, setting forth the problem of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulation.
- 3.13.6 The Contractor acknowledges the possibility that the Owner may occupy existing facilities on-site during construction. The Contractor shall take all steps necessary to avoid disruption,

isolate and separate Work activities, and avoid adversely impacting Owner's use of facilities during construction.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate Contractors by cutting, patching or otherwise altering such construction, or by excavation by the Owner or a separate Contractor except with written consent of the Owner and of such separate Contractor, such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the interior, premises and surrounding area free from accumulation of dust, waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 The Contractor shall keep the interiors of the project building(s) free of stored or unattended combustible materials

3.15.3 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.16.2 The authorized representatives and agents of the Architect, the Owner and such other persons as the Owner may designate, shall have access to and be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records wherever they are in preparation and progress. The contractor shall provide proper facilities for such access, inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 The CONTRACTOR shall defend, indemnify and hold harmless OWNER, its agents, employees, elected officers and representatives from liabilities, damages, penalties, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the

indemnifying party and persons employed or utilized by the indemnifying party in the performance of the construction contract.

- 3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. In addition, compliance with insurance requirement shall not relieve the Contractor of its responsibility to indemnify the Owner, nor shall the indemnification obligation be negated or reduced by virtue of an insurance carrier's denial or coverage or refusal to defend.
- 3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation of approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

- 4.1.1 The Architect is the person lawfully licensed to practice Architecture or an entity lawfully practicing Architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term 'Architect' means the Architect or the Architect's authorized representative.
- 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.
- 4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an Architect whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

- 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
- 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an Architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

- 4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate Contractors shall be through the Owner.
- 4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificate for Payment in such amounts.
- 4.2.6 The Architect or Owner will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the work.
- 4.2.7 The Architect will review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken within fifteen (15) days as to cause no delay in the Work or in the activities of the Owner, Contractor or separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's acceptance of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.2.8 The Architect will prepare and issue to the Contractor Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.
- 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will certify the Contractor's final Application for Payment upon compliance with the requirements of the Contract Documents.

- 4.2.10 The Owner and Architect may provide one or more Project representatives.
- 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.
- 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.
- 4.3 **CLAIMS AND DISPUTES**
- 4.3.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term 'Claim' also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 4.3.1.1 All written Claims must specifically detail all facts and issues substantiating the claim, including all costs and expenses incurred.
- 4.3.2 **Decision of Architect.** Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) forty-five (45) days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.
- 4.3.3 **Time Limits on Claims.** Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice and include all facts and detailed cost data substantiating the Claim. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.
- 4.3.4 **Continuing Contract Performance.** Pending final resolution of a Claim including litigation, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 4.3.5 **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

- 4.3.5.1 No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, test, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

4.3.6 Claims for Additional Cost

- 4.3.6.1 If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds. Claim shall be filed in accordance with the procedure established herein.

- 4.3.6.2 All claims as provided for in Paragraph 4.3.6 shall be made by specific written notice and shall detail all facts and issues substantiating the claim including all costs and expenses incurred or to be incurred.

4.3.7 Claims for Additional Time

- 4.3.7.1 If the Contractor wishes to make Claim for any increase in the Contract Time, specific written notice as defined in Paragraph 4.3.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

- 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction and that the conditions of 8.3.1.1 have been met as measured against the most recent Progress Schedule.

- 4.3.8 **Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party

within a reasonable time not exceeding twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

- 4.3.8.1 The written notice required by Paragraph 4.3.8 shall be defined in Paragraphs 4.3.1 and 4.3.1.1.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

- 4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.
- 4.4.2 If a Claim has been resolved, the Architect will obtain, prepare and issue appropriate documentation.
- 4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.
- 4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 ARBITRATION

- 4.5.1 **Controversies and Claims Subject to Arbitration.** The Contractor and the Owner shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference herein to arbitration is deemed void.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term 'Subcontractor' is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term 'Subcontractor' does not include a separate Contractor or Subcontractors of a separate Contractor.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term 'Sub-subcontractor' is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 The Contractor shall submit to the Owner a list of Subcontractors proposed for the Work per Specifications, Section 00430 Coordination. Subcontractors listed in the bid shall not be replaced without good cause. The Contractor shall indemnify and save harmless the Owner and its agents from the claims of any Subcontractors who allege that the Contractor replaced them without first establishing good cause to justify such a replacement.
- 5.2.1.2 Notwithstanding anything contained herein to the contrary, the Owner and Architect shall maintain the right to require the Contractor to replace a Subcontractor with which the Owner or Architect has reasonable objection.
- 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased by the lesser of the following: (1) the difference between the subcontract amount proposed by the person or entity recommended by the Contractor and the subcontract amount proposed by the person or entity accepted or designated by the Owner and the Architect; (2) the amount by which the subcontract amount proposed by the person or entity accepted or designated by the Owner and the Architect exceeds the amount set forth in the Schedule of Values which is applicable to the Work covered by such subcontract. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
- 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objections to such change.

5.3 SUB CONTRACTUAL RELATIONS

- 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- 5.4.1.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- 5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
- 5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the contract by the Owner pursuant to Paragraph 14.2 and the Owner chooses to accept assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension beyond the thirty (30) day period.
- 5.4.3 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- 6.1 **OWNERS RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**
 - 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts including Subcontractors currently on the Project in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.
 - 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term 'Contractor' in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
 - 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate Contractors and the Owner until subsequently revised.
 - 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or other entities, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.
- 6.2 **MUTUAL RESPONSIBILITY**
 - 6.2.1 The Contractor shall afford the Owner and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

- 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgement that the Owner's or separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
- 6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.
- 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate Contractors as provided in Subparagraph 10.2.5.
- 6.2.5 Claims and other disputes and matters in question between the Contractor and a separate Contractor shall be subject to the provisions of Paragraph 4.3 provided the separate Contractor has reciprocal obligations.
- 6.2.6 The Owner and each separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.
- 6.3 OWNER'S RIGHT TO CLEAN UP**
- 6.3.1 If a dispute arises among the Contractor, separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

- 7.1.1 Changes in the Work may be accomplished after execution of the contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.
- 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Paragraph 9.7.2, a change in the Contract Sum or the contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment of the Work, shall be the basis of claim to any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

- 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. Unit prices shall include all overheads and profit.
- 7.1.5 In Subparagraph 7.1.3 the allowance for all home and field office overhead and profit combined, included in the total cost to the Owner, shall be limited to the following schedule:
- 7.1.5.1 For the Contractor, for work performed by the Contractor's own forces, ten (10%) percent of the cost for the work.
- 7.1.5.2 For the Contractor, for work performed by the Contractor's Subcontractor (at any tier), five (5%) percent of the amount due the Subcontractor.
- 7.1.5.3 For each Subcontractor who performs work with its own forces, ten (10%) percent.
- 7.1.5.4 For each Subcontractor not performing work with its own forces, five (5%) percent.
- 7.1.6 The cost of the bond premium will be based upon the amount listed in the contract bonds received from the Surety. Costs associated with extended overhead will not be allowed.
- 7.1.7 Cost shall be limited to the following: Bond premiums, cost of materials, including sales tax (in effect at time of change order) and cost of delivery, cost of labor and fringe benefits, including Social Security, Old Age and Unemployment Insurance (labor cost may include a pro rate share of foreman's time only in case an extension of Contract Time is granted on account of the change); Workmen's Compensation Insurance; rental value of power tools and equipment
- 7.1.8 All costs associated with off-site project management and administration, accounting, estimating, and related items shall be included in the applicable percentage for overhead and profit referenced above.
- 7.1.9 Overhead shall include the following: Supervision, superintendence, wage of time keepers, watchmen and clerks, small tools incidentals, general office expense and all other expenses not included in "cost".
- 7.1.10 All quotations and proposals shall be in sufficient detail and itemization of labor, materials and equipment to allow the Owner to verify the reasonableness of the costs proposed. Subcontractors' and Sub-subContractors' quotes, at all tiers, shall be disclosed on their company's particular letterhead or quote form and signed by an officer of that company.
- 7.2 CHANGE ORDERS**
- 7.2.1 a Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:
- 7.2.1.1 a change in the Work;
- 7.2.1.2 the amount of the adjustment in the Contract Sum, if any; and
- 7.2.1.3 the extent of the adjustment in the Contract Time, if any
- 7.2.2 methods used in determining adjustments to the Contract Sum may include those listed in subparagraph 7.3.3.

7.2.3 Agreement on any Change Order shall constitute a final settlement and full accord and satisfaction of all matters relating to the change directly or indirectly changed or unchanged in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum, or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusting accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. The Contractor, pursuant to the terms of Article 7.3 shall upon receipt of a Construction Change Directive proceed without delay with the change in the work governed by the Construction Change Directive. However, notwithstanding anything contained within this contract to the contrary, the Owner shall not be required to make payment to the Contractor for the work covered by the Construction Change Directive until such time as the terms of the Construction Change Directive have been finalized and incorporated into an executed Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall proceed without delay with the change in the Work involved and immediately in writing advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the contract sum or contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall become effective only upon execution of a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an allowance for overhead and profit as specified in Paragraph 7.1.5. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized

accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

- 7.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;
- 7.3.6.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 7.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- 7.3.6.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with, respect to that change.
- 7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.
- 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

- 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders without delay.

ARTICLE 8 TIME

8.1 DEFINITIONS

- 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- 8.1.2 The date of commencement of the Work is the date established in the Notice to Proceed, issued by the Owner. The date shall not be postponed by the failure to act of the Contractor or persons or entities for whom the Contractor is responsible.
- 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.
- 8.1.4 The term 'day' as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

- 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period of performing the Work.
- 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a Notice To Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.
- 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial completion within the contract time.
- 8.2.4 When the Contractor proposes to schedule work on Saturdays and Sundays or legal holidays, written notification shall be given to the Architect and Owner within forty-eight (48) hours prior to that date.
- 8.2.4.1 The Contractor shall furnish adequate forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work as may be necessary to insure the prosecution of the work in accordance with the approved Progress Schedule and updates. If the Contractor falls behind progress required in the Progress Schedule, the Contractor shall take such steps as may be necessary to improve its programs, and the Owner may require the Contractor to increase the number of shifts and/or overtime operations, day of work and/or the amount of construction plant, all without additional cost to the Owner under this Contract. Failure of the Contractor to comply with this provision shall be grounds for termination of the Contract by the Owner in accordance with Paragraph 14.2. Direction from the Architect or Owner under this provision shall not be construed by the Contractor as acceleration.

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other caused beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Architect determines may justify delay, the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion with the contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the contract time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated, by the Contractor, or (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay and (3) is of a duration not less than one (1) day.
- 8.3.1.1 Weather, which hinders or prevents work, is not a basis for a time extension unless it surpasses in severity the weather reasonably to be expected in the locality at the particular time of the year. If the contractor files timely notice that he was delayed by weather sufficiently severe as to entitle Contractor to additional time, Contractor should furnish promptly, a statement of the portion of the work affected, an explanation as to the reasons work was prevented or hindered by the weather if not readily apparent, the dates on which such portions of work were affected,

the total number of days the job in its entirety was delayed, and other information such as official weather bureau climatological data for a ten year period, local weather bureau data, job daily records, etc. Time extensions due to adverse weather shall not be allowed after the Contract Substantial Completion date. Construction time is based on Local Average weather conditions. Requests for time extensions due to adverse weather, shall be considered only for and equal to the number of "rain days" in excess of the ten year mean average number of days for any given time period as shown by the the US National Oceanic and Atmospheric Administration, National Climatic Data Center, Ashville, North Carolina for Tallahassee, Florida. The mean number of "rain days" for a month is as shown on the "U.S. Summary Report" under the heading "Number of days -- Precipitation .01 inch or more". If current rainfall is less than average, the contract time will not be shortened. Extension of time requests due to adverse weather shall be submitted within twenty (20) days after adverse weather. The Contractor shall submit the referenced climatological summary data immediately upon its availability and shall show how the time extension request corresponds with the climatological data.

- 8.3.1.2 Extension of time will be granted only to the extent that equitable time adjustments for activity or activities affected exceed the total float or slack associated with those activities at the time the direction to proceed was issued for the change. The Contractor acknowledges and agrees that delays in activities which do not affect any milestone completion dates shown on the network at the time of delay shall not be a basis for granting a time extension.
- 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.
- 8.3.3 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.
- 8.3.4 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Paragraph 8.3.1. shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar claims (collectively referred to in this Paragraph 8.3.4 as Delays) whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.
- 8.3.5 Failure to complete the Project within the time fixed in this Agreement or Construction Documents will result in substantial injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty within the time fixed or within such further time, the Contractor shall pay to the Owner as Liquidated Damages for such delay, and not as a penalty, an amount stipulated in the Construction Documents. These Liquidated Damages shall be payable in addition to any expenses or costs payable by the Contractor to the Owner under the provisions of the Contract Documents and shall not exclude the recovery of damages of the Owner under the Contract Documents. The Contractor shall pay to the Owner as Liquidated Damages for such delay, and not as a penalty, **Five Hundred Dollars (\$500.00)** for each and every calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion shall have been fully accomplished. It is

also hereby agreed that if after **thirty (30)** calendar days after Substantial Completion this Project is not fully and finally completed in accordance with the requirements of the Contract Documents, the Contractor shall pay to the Owner as Liquidated Damages, and not as a penalty, for such delay, one-fourth (1/4) of the rate previously indicated. These Liquidated Damages shall be payable in addition to any expenses or costs payable by the Contractor to the Owner under the provisions of the Contract Documents and shall not exclude the recovery damages of the Owner under the Contract Documents. This provision of Liquidated Damages for delay shall in no manner affect the Owner's right to terminate the Contract. The Owner's exercise of the right to terminate shall not release the Contractor from his obligation to pay Liquidated Damages. It is further agreed that the Owner may deduct from the balance of the Contract Sum held by the Owner the Liquidated Damages stipulated herein, or such portions as said balance will cover.

- 8.3.6 The Contractor agrees to make no claim for damages for delay in the performance of the contract occasioned by any act or omission of the Owner or any of its agents or representatives, or because of any injunction which may be brought against the Owner and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work as provided herein.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

- 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

- 9.2.1 Upon full execution of the agreement, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, when approved by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. No subsequent pay requests will be approved until contractor has submitted an acceptable schedule of values.
- 9.2.2 The work items listed in the Schedule of Values shall relate directly to the items in the Progress Schedule required in Subparagraph 3.10.1. The Schedule of Values shall be arranged to conform to CSI Master Format for Divisions and Sections, with each item containing overhead and profit. The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (1) description of Work (listing labor and material separately), (2) Total value, (3) percent of the Work completed to date, (4) value of Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed, and (8) value of Work completed to date. Any trade breakdown which fails to include sufficient detail, is unbalanced or exhibits 'front-loading' of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

9.3 APPLICATIONS FOR PAYMENT

- 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Document.
- 9.3.1.1 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.
- 9.3.1.2 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:
- 9.3.1.3 a current Contractor's waiver and release duly executed and acknowledged sworn statement showing all Subcontractors and materialmen with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor and materialmen in the requested progress payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and materialmen;
- 9.3.1.4 duly executed waivers of mechanics' and materialmen's liens from all Subcontractors in the form as prescribed in Section 713.20(4), Florida Statutes and, when appropriate, from materialmen and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and
- 9.3.1.5 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.
- 9.3.1.6 Contractor has reviewed the construction on the Project and certifies that the Work has progressed to the point indicated, and Contractor further certifies that to the best of its knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by Contractor for work for which previous Certificates of Payment were issued and payments received from the Owner, and that current payment shown herein is now due. Contractor specifically represents and certifies to Owner that there are no claims for additional compensation or damages with respect to the Work as of the date of this Certification, except for those identified below. Notwithstanding anything to the contrary, the payment by the Owner to the Contractor shall not relieve Contractor of its duty to perform the Work in accordance with the Contract Documents; provided, however, Contractor assumes no responsibility for the Architects duty to design the Project. Contractor will use its best efforts to obtain from each Subcontractor who performs Work covered by the Application for Payment a certification to Owner with language similar to that of Contractor.
- 9.3.1.7 These submissions of a pay application signed by the Contractor shall constitute the Contractor's certification that all undisputed invoices and amounts due to suppliers and Subcontractors have been paid by the Contractor.
- 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. At the Owner's discretion, partial payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon by the Architect and Owner in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the

Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site.

- 9.3.2.1 The aggregate cost of materials stored off site shall not exceed \$100,000 at any time without the prior written approval by the Owner.
- 9.3.2.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings and UCC searches.
- 9.3.2.3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- 9.3.2.4 The consent of any surety shall be obtained by the Contractor to the extent required prior to payment of any materials stored off the Project site.
- 9.3.2.5 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.
- 9.3.2.6 Such materials shall be protected from diversion, destruction, theft and damage, specifically marked for Project use and segregated from other materials at the storage facility.
- 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

- 9.4.1 The Architect will, within three (3) **business** days after receipt of the Contractor's proper application for payment, either issue to the Owner a certificate for payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in subparagraph 9.5.1.
- 9.4.1.1 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain

how or for what purpose the Contractor has used money previously paid on account of the contract Sum.

- 9.4.2 If the Contractor has submitted a timely and proper application for payment in accordance with this article, payment may be expected with twenty-five (25) **business** days of the receipt of the approved proper application. Payment for a proper application reducing or releasing retainage may exceed this duration

9.5 DECISIONS TO WITHHOLD CERTIFICATION

- 9.5.1 The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect deems is proper and is able to make such representations to the Owner. The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss because of:

- 9.5.1.1 defective Work not remedied;
 - 9.5.1.2 third party and notices of non-payment claims filed or reasonable evidence indicating probable filing of such claims;
 - 9.5.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
 - 9.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - 9.5.1.5 damage to the Owner or another Contractor;
 - 9.5.1.6 reasonable evidence that the Work will not be completed within the contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - 9.5.1.7 persistent failure to carry out the Work or administrative requirement in accordance with the Contract Documents.
- 9.5.2 When the above reasons for withholding certification are remedied by the Contractor, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

- 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided.
- 9.6.1.1 The Owner shall withhold retainage from each progress payment an amount equal to ten percent (10%) of the progress payment, until 50% completion. After 50% completion, the Owner shall reduce the retainage withheld to five percent (5%) the amount of retainage held from each progress payment.

- 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by similar agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- 9.6.3 The Architect or Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor as reflected in the Contractor's Schedule of Values.
- 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.
- 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.
- 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of work not in accordance with the Contract Documents.
- 9.7 FAILURE OF PAYMENT**
- 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within three (3) **business** days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within twenty-five (25) days after receipt, except as provided in Paragraph 9.4.3 the amount certified by the Architect then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.
- 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the contract Sum by an amount equal to that which the Owner is entitled.
- 9.8 SUBSTANTIAL COMPLETION**
- 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and as certified by the Architect so the Owner can occupy or utilize the Work for its intended use.
- 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with

the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, complete or correct such item. As a result of the inspection, the Architect may generate an additional list of items to be completed or corrected. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate which shall identify all non-conforming, defective and incomplete Work and establish the date of commencement of warranties in connection with any such Work. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting approved adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.8.4 The contractor shall submit at substantial completion, three (3) copies of a certificate from each manufacturer's technical representatives that all Plumbing, HVAC and Electrical equipment and material have been installed properly and that all warranties and guarantees will be valid.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due

the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

- 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner approves, (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) ,if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such claim. If such claim remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.
- 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 9.10.3.1 The Contractor and all subcontractors shall submit final releases of payment in consideration of final payment by the Owner. Final releases shall accompany the application for payment for which the release applies and shall be in the exact form as listed in **Specifications**.
- 9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.
- 9.10.5 Notwithstanding any other provisions of the Contract Documents, no final payment or release of the retainage will be due to the Contractor until final acceptance of the work by Owner, Architect and final acceptance inspection and approval of the Department of Education. Final Payment shall be made after this date.
- 9.10.6 Neither the final payment nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence, defects of manufacturer, faulty materials, or workmanship to the extent within the period provided by law; and upon written notice that they

shall remedy any defects due thereto and pay all expenses for any damages to other work resulting therefrom.

- 9.10.7 The Owner will suffer damages if the Project is not substantially and finally complete on the dates set forth in the Contract Documents. The Contractor (and the Contractor's Surety) shall be liable for and shall pay to the Owner the Sums hereinafter stipulated as fixed, agreed as liquidated damages for each calendar day of delay until the Work is Substantially and Finally Complete. The Owner and Contractor agree that the daily sum fixed herein as liquidated damages is not to be construed as a penalty, but instead is the parties' best estimate as to the daily damages which the Owner will incur at the time of execution of the Contract. The assessment of liquidated damages alone shall not be the sole basis in determining whether or not the contract was properly completed on time, and the Owner shall weigh, at the Owner's sole discretion, such assessment against other mitigating factors that are beyond the contractor's control.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising **and documenting** all safety precautions and programs in connection with the performance of the Contract.
- 10.1.2 Unless provided elsewhere in the Contract Documents, in the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall be resumed: (1) upon written notification by the Owner that no asbestos or polychlorinated biphenyl (PCB) is present, or (2) when the Owner confirms in writing that the presence of asbestos or polychlorinated biphenyl (PCB) and has been rendered harmless.
- 10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB) mitigation.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- 10.2.1.1 employees on the Work and other persons who may be affected thereby;
- 10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, whether Contractor or Owner furnished, and under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- 10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The contractor shall comply with all applicable provisions of the Workmen's Compensation Law, specifically, Chapter 440.56, Safety Rules and Provisions and the various safety codes or regulations adopted by the Florida Department

of Commerce and the State of Florida. The Contractor shall be familiar with each of these documents and designate a safety officer to be responsible for compliance with these safety provisions.

- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent sites and utilities.
- 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.
- 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.
- 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
- 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 10.2.8 When all or portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.
- 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage.
- 10.2.10 The Contractor and all subcontractor personnel working on-site shall comply with Sections 1012.465, 1012.467, and 1012.468, Florida Statutes and Leon County School Board Policy 8475 (Jessica Lunsford Act).
- 10.2.11 In accordance with National Emission Standards For Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61, Subpart M and other guidance materials relating to asbestos regulations, the Contractor shall provide required notice to Florida Department of Environmental Protection prior to the start of any renovation involving existing asbestos containing building materials. Similar notice shall be sent for a demolition project even if no asbestos containing material is present in the facility

10.3 **EMERGENCIES**

- 10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

**ARTICLE 11
INSURANCE AND BONDS**

11.1 CONTRACTOR'S INSURANCE

- 11.1.1 The Contractor shall, at its sole expense, maintain in effect at all times during the performance of Work, insurance coverages with limits not less than those set forth below with insurers and under forms of policies satisfactory to Owner. The Contractor shall deliver to Owner no later than ten (10) days after award of this Agreement but, in any event, prior to execution of this Agreement by Owner and prior to commencing Work on the Project, Certificates of Insurance, IDENTIFIED ON THEIR FACES AS TO PROJECT NAME AND THIS AGREEMENT NUMBER TO WHICH APPLICABLE, as evidence that policies providing such coverage and limits of insurance are in full force and effect, which Certificates shall provide that no less than thirty (30) days advance notice will be given in writing to Owner prior to cancellation, termination or material alteration of said policies or insurance. The subject Certificates and other evidence are subject to the review and approval by the Owner as to form and substance
- 11.1.2 The Contractor shall purchase and maintain, at its sole cost and expense, in a company or companies to which the Owner has no reasonable objection, insurance for protection from claims which may arise out of or result from the Contractor's operations under this Agreement for Construction, whether such operations by itself or by any subcontractor, sub-subcontractor or materialman, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable in the amounts and for the coverages required in this Article. Contractor shall not allow any subcontractor to commence work on the Project until such subcontractor has obtained the same insurance coverages and limits as required of Contractor herein.
- 11.1.3 All insurance shall be carried in companies satisfactory to Owner, shall name Owner as additional insured. Contractor shall not commence the Work under this Agreement until it has obtained all insurance required hereunder and true copies of policies evidencing such insurance have been submitted to and approved by Owner.
- 11.1.4 The insurance required under this Section shall include the following coverage and limits in the following categories, amounts and detail:
- 11.1.4.1 Worker's Compensation and Employers' Liability Insurance for all employees at the Project, as follows:
- 11.1.4.1.1 Coverage A (Worker's Compensation) – Statutory Limits
- 11.1.4.1.2 Coverage B (Employers' Liability) – One Million and No/100 U.S. Dollars (\$1,000,000.00) each accident
- 11.1.4.1.2.1 Broad Form All States Endorsement
- 11.1.4.1.2.2 Voluntary Compensation Endorsement
- 11.1.4.2 Commercial General Liability Insurance, on an "occurrence" basis, including:
- 11.1.4.2.1 Bodily injury and Property Liability
- 11.1.4.2.1.1 One Million and No/100 U.S. Dollars (\$1,000,000.00) each occurrence
- 11.1.4.2.1.2 Two Million and No/100 U.S. Dollars (\$2,000,000.00) for aggregate-products and completed operations

- 11.1.4.2.1.3 Two Million and No/100 U.S. Dollars (\$2,000,000.00) general aggregate (General Aggregate Limit specified above is warranted to be unimpaired by either payment of final claims or amounts reserved for pending claims as of the date of this Agreement. Separate Primary Limits of Insurance with Two Million and No/100 U.S. Dollars (\$2,000,000.00) General Aggregate Limit [other than products completed operations] will be maintained solely for this Project
- 11.1.4.2.2 These Commercial General Liability Policies shall include the following coverages:
 - 11.1.4.2.2.1 Premises – Operations Liability
 - 11.1.4.2.2.2 Independent Contractors Liability (to cover Contractor's liability arising out of the Work performed by its subcontractors.
 - 11.1.4.2.2.3 Blanket Contractual Liability Insurance (including Completed Operations).
 - 11.1.4.2.2.4 Personal Injury Liability Insurance (with employee and contractual exclusions removed).
 - 11.1.4.2.2.5 Broad Form Property Damage Liability Insurance (including completed operations).
 - 11.1.4.2.2.6 Railroad Protective Liability Insurance.
- 11.1.4.3. Comprehensive Automobile Liability Insurance covering allowed, hired or non-owned vehicles including the loading or unloading thereof – One Million and No/100 U.S. Dollars (\$1,000,000.00) each accident
- 11.1.4.3 Umbrella Liability Insurance covering all operations of the Contractor:
 - 11.1.4.4.1 One Million and No/100 U.S. Dollars (\$1,000,000.00) each occurrence.
 - 11.1.4.4.2 Two Million and No/100 U.S. Dollars (\$2,000,000.00) aggregate.
- 11.1.5 **Indemnification Rider:** The Construction Manager at Risk's Liability Policy should provide a "Hold Harmless" rider to cover provisions include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Contract.

11.2 **PROPERTY INSURANCE**

- 11.2.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Florida, property insurance in the amount of the initial Contract sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the Property required by this Paragraph 11.2 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.
 - 11.2.1.1 Property insurance shall be on an all-risk replacement value policy form and shall insure against the perils of fire, storm, sinkhole, flood and wind damage extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable

compensation for Architect's services and expenses required as a result of such insured loss. The form of policy for this coverage shall be the full insurable value of the Work.

- 11.2.1.2 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

11.3. DEDUCTIBLES

- 11.3.2.1 The Contractor shall pay all deductibles for all insurance coverages in Article 11, with the exception of Articles 11.4.
- 11.3.2.2 The Contractor shall be responsible for all costs which are less than the deductible amounts.
- 11.3.3 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power.
- 11.3.4 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4 OWNER'S LIABILITY INSURANCE

- 11.4.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.5 PERFORMANCE BOND AND PAYMENT BOND

- 11.5.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the contract. The amount of each bond shall be equal to one hundred percent (100%) of the Contract sum.
 - 11.5.1.1 The Contractor shall furnish Payment and Performance Bonds as required by Section 255.05, Florida Statutes and Section 1013.47 Florida Statutes.
 - 11.5.1.2 The form of the Performance and Payment Bonds shall be as prescribed in Section 255.05, Florida Statutes. The original bond documents shall be recorded with the Clerk of the Court in the public records of Leon County, Florida, and two (2) certified copies of the recorded documents shall be provided to the Owner.
 - 11.5.1.3 Contractor's Bonds shall be issued by a surety licensed to conduct business in the State of Florida, and shall be rated "A-" or better by Best Insurance Rating Guide and appear in the current list of Sureties published by the U.S. Department of Treasury.
 - 11.5.1.4 The Surety will include on the bond form the cost of the Performance and Payment Bond.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

- 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect or Owner's observation and be replaced at the Contractor's expense without change in the contract Time.
- 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate Contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

- 12.2.1 The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. If prior to the date of Final Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other mechanical device, the Contractor shall cause such item to be restored to 'like new' condition at no expense to the Owner.
- 12.2.2 If, within one year after the date of Substantial completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the contract. The Owner shall give such notice promptly after discovery of the condition. Nothing in this paragraph shall be construed to limit or reduce the Contractor's warranty obligations under Paragraph 3.5.
- 12.2.2.1 The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property caused by the defective Work.
- 12.2.2.2 Upon completion of any Work under or pursuant to this Paragraph 12.1, the one (1) year correcting period in connection with the Work requiring correction shall be renewed and recommence.
- 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' after written notice, the

Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the contract sum will be reduced as appropriate and equitable, or prompt payment of damages remitted to the Owner. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The contract shall be governed by the law of the State of Florida. The sole and exclusive venue for initiating any legal proceeding concerning the terms of the contract or the Work performed pursuant thereto shall be in the appropriate state court in Leon County, Florida.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the contract as a whole or in part, without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

- 13.4.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

- 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be required. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections or approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded. The Contractor shall not obligate the Owner for costs without the Architect's approval.
- 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear such costs except as provided in subparagraph 13.5.3.
- 13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.
- 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.
- 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.
- 13.5.6 Owner to notify Contractor of selected testing company. All tests, except those preformed exclusively for the Contractor's convenience, shall be paid by the Owner; however, the Contractor must notify and/or coordinate with the testing firms with proper notification to the Owner. Any retests made necessary by the Contractor's failure to perform to the specs in the specifications, these costs shall be paid by the Contractor.

13.6 INTEREST

- 13.6.1. Notwithstanding the contractor's compliance with the claim or dispute resolution terms of this contract and Section 715.12, Florida Statutes, the contractor shall not be entitled to any interest on payments which may be due and unpaid by the owner; nor shall the contractor be entitled to any prejudgments interest on any damages awarded to the contractor in any civil action or on any arbitration award, even if the owner is found to have breached the contract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

- 14.1.1 The Contractor may terminate the contract if the work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the work under contract with the Contractor, for any of the following reasons:
- 14.1.1.1 issuance of an order of a court or other public authority having jurisdiction;
- 14.1.1.2 an act of government, such as a declaration of national emergency, making material unavailable;
- 14.1.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages only for such executed work.
- 14.1.3 If the Work is stopped for a period of sixty (60) days or if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate the lesser of an amount to the Contract Time or one hundred twenty (120) days in any one (1) year period through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER

- 14.2.1 The Owner may terminate the contract if the Contractor:
- 14.2.1.1 refuses or fails to supply enough properly skilled workers or proper materials;
- 14.2.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 14.2.1.3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- 14.2.1.4 is guilty of substantial breach of a provision of the Contract Document;
- 14.2.1.5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;

- 14.2.1.6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- 14.2.1.7 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.
- 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
 - 14.2.2.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - 14.2.2.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
 - 14.2.2.3 finish the Work by whatever reasonable method the Owner may deem to be in the Owner's best interest.
- 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.
- 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses, and any legal expenses, made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.
- 14.3 **SUSPENSION BY THE OWNER FOR CONVENIENCE**
 - 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
 - 14.3.2 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

ARTICLE 15 SMALL BUSINESS DEVELOPMENT

- 15.1 The Construction Manager shall comply with the Owner's Small Business Development Office program requirements. **LCSB Small Business Development Office. [www.leonschools.net/Sharepoint/Depts/Small Business Development SBDO website: http://sharepoint.leon.k12.fl.us/sbd/default.aspx](http://www.leonschools.net/Sharepoint/Depts/Small%20Business%20Development/SBDO%20website/http://sharepoint.leon.k12.fl.us/sbd/default.aspx)**

ARTICLE 16 EQUAL OPPORTUNITY

- 16.1 The Contractor shall maintain policies of employment as follows:
 - 16.1.1 The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or

age. Such action shall include employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

- 16.1.2 The Contractor and all subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age

ARTICLE 17 WAIVER OF TRIAL BY JURY

- 17.1 The parties herein expressly agree that in the event litigation between the parties ensues concerning the enforcement of this Contract, that they hereby voluntarily waive all rights to trial by jury of any such litigation, and instead agree to have any and all such disputes tried before a judge as the sole finder of fact.

ARTICLE 18 APPRENTICESHIP

- 18.1 The Owner desires to use the facilities construction program as a vehicle encouraging training, apprenticeship, internship, and co-op opportunities. Apprentices are individuals that come from a registry approved apprenticeship, youth apprenticeship, pre-apprenticeship, or trades training program. Interns are individuals from a college or university program working under an internship or co-op program.
- 18.2 The intent of the Owner is to build awareness in our students of the good careers in the construction industry. In order to effectuate this intent, the Contractor shall actively participate in a recognized Construction Trades Training Program. Participation shall mean that the Contractor shall employ at least one (1) youth apprentice from a State of Florida approved youth apprenticeship program, is such youth apprentices are available for employment, for each subcontract trade listed by the Contractor in its bid in accordance with Paragraph 5.2.1 of the Contract General Conditions. The Contractor shall accurately substantiate its compliance, or evidence of its good faith efforts to comply, upon the request of the Owner. The Contractor and its Subcontractors can seek recommendations from the appropriate program, agency or school for interns that would meet these requirements.
- 18.3 To be viewed as having put forth a good faith effort to solicit, recruit, and employ apprentices and interns to the intent stated above, a Contractor or design firms' efforts should be active, earnest, diligent and aggressive. To that end, each firm contracted to work on these Projects is required to adopt the following equal opportunity pledge:
- 18.3.1 The recruitment, selection, employment and training of apprentices or interns, during their apprenticeship or internship shall be without discrimination because of race, color, religion, national origin, or sex. Local program sponsors will take affirmative action to provide equal opportunity and apprenticeship and will operate the apprenticeship program as required under Title 29 of the code of Federal Regulations, part 30, as amended.
- 18.4 The provisions of this apprentice and intern policy shall be construed according to and in conformity with applicable local, State, and Federal laws.

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IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above on the front of this Agreement.

CONSTRUCTION MANAGER

Attest:

(Print Name, Title and Corp. Seal)

By: _____
(Print Name and Title)

Date:

As Witnessed by:

**THE SCHOOL BOARD OF LEON COUNTY, FLORIDA
OWNER**

Attest:

(Name and Seal)
(Board Chairman)

By: _____

Date: _____

As Witnessed by:

Via BoardDocs
School Board Attorney